


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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2023-031


Lieutenant (LT/O-3)

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 April 15, 2023 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 September 19, 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, a Lieutenant (LT/O-3) in the Select Reserve asked the Board to correct his record by correcting his Statement of Creditable Service (SOCS) to remove the break in service from July 1, 2016 to August 1, 2016 and that his Date of Rank (DOR) on his SOCS be changed to the original date of May 21, 2008 in accordance with the Officer Accessions, Evaluations, and Promotions manual, COMDTINST M1000.3A and ALCOAST 047/23.

The applicant explained that in April 2022 he received a Ready to Reserve SOCS which reflected an inaccurate date of accession of August 2, 2016 and in turn changed his DOR from May 21, 2008 to August 2, 2008. The applicant asked that this DOR be returned to his original DOR of May 21, 2008 when he was first commissioned as a LT.

The applicant stated that during his transition from active duty to the Reserve in 2016, he transitioned into the Inactive Ready Reserve while he awaited orders to the active Reserve component, which he received in October 2017. The applicant alleged that as he was transitioning to the active Reserve component he communicated with Reserve Personnel Management (RPM) regarding his accession and career expectations. The applicant stated that an RPM staff member communicated to him via email that the "DOR reset happens for regular officers because the policy makes their date of rank the same as the date that they sign their Reserve Oath of Office. Because

you already [had] a Reserve Commission, you didn't need a new one to come into the Reserve." However, he contended that six years later he received a SOCS alleging a 1-month break in service from July 1, 2016 through August 1, 2016 and reflected a new DOR of August 2, 2008. The applicant stated that he was uncertain as to how the break in service was assessed or the DOR calculated but these changes had a significant impact on personal, professional, and family life because his retirement had to be extended by one year.

The applicant contended that after he transitioned from active duty on June 30, 2016 his Reserve commission was approved and issued on March 16, 2016. The applicant further contended that in accordance with ALCOAST 047/23, which states:

(2) Applicants who apply for a Reserve commission within one year of separation as a result of multiple non-selections on the ADPL, and who are appointed in the same grade previously held in the Regular Navy or Coast Guard, may retain the same date of rank and precedence in that grade as was previously assigned or be given a date of rank effective upon execution of an oath for a Reserve commission, as determined by the Panel (14 U.S.C. Section 3738).

He was entitled to retain his same date of rank or be given a new DOR effective upon execution of an oath of office. The applicant also cited to Article 1.G.4. of the Officer Accessions, Evaluations, and Promotions Manual, COMDTINST M1000.3A, however, the version of manual the applicant cited to was not in effect until July 2020 and therefore was not applicable at the time of his commissioning in 2016. Accordingly, the Board will not summarize the policy here.

The applicant explained that he communicated with Coast Guard Pay and Personnel Center (PCC) via a trouble ticket and PPC confirmed that their internal process guide, not Coast Guard policy, that it is the member's responsibility to disprove the validity of their SOCS statement with physical paperwork. According to the applicant, PPC told him that to prove the data in Direct Access was incorrect, he must submit an Oath of Office, but he claimed he was never given an Oath of Office by RPM because RPM told him it was not needed. The applicant claimed that he has searched his physical Personnel Data Record (PDR), Electronic PDR, and record archives and there is no paperwork or Oath of Office indicating that he should have experienced this break in service or that PPC should have changed his DOR from May 21, 2008 to August 2, 2016. The applicant stated that he contacted RPM and requested a replacement for his missing Oath of Office but his request was denied, leaving him with no Oath of Office to dispute the data contained in Direct Access or his SOCS.

The applicant alleged that he did not enter a Coast Guard facility prior to June 30, 2016 or the day he weighed in for entrance into the Reserve component. The applicant alleged that he was not physically present to sign his Oath of Office on or after August 2, 2016, which is the only way his DOR could have been changed.

SUMMARY OF THE RECORD

The applicant graduated from the Coast Guard Academy on May 21, 2003 and was commissioned the same day. The applicant served on active duty from May 21, 2003 until December 2, 2008 when he left active duty and transferred to the Coast Guard Select Reserve.

On August 16, 2011, the applicant left the Select Reserve.

On August 16, 2011, the applicant reentered active duty with no break in service.

On June 30, 2016, the applicant was discharged for twice failing selection to Lieutenant Commander (LCDR).

On March 16, 2016, the applicant's request to enter the Coast Guard Reserve and receive a commission was approved via a memorandum. The applicant was offered a commission as a LT. The applicant was informed that he had 90 days from the date he was released from active duty, June 30, 2016, to complete his accession into the Coast Guard Reserve. The applicant was instructed that to begin the process he was required to provide his qualifying retention physical and once his medical paperwork was received, the Coast Guard would send his accession documents for signature. The applicant was instructed to take the completed accession paperwork and a copy of the memorandum to his Servicing Personnel Officer (SPO) for processing before his separation date. The applicant was encouraged not to delay and that if he incurred a break in service of more than 24 hours he was required to contact Reserve Personnel Management for assistance. The memorandum was only valid for 90 days from the date of the applicant's release from active duty. Finally, the applicant was informed that his Reserve commission date would be no earlier than the date he was separated from the service or the date he executed his oath, whichever comes later.

According to the Coast Guard's Direct Access system, the applicant was recommissioned on August 2, 2016, more than 30 days after his release from active duty which resulted in a break in service. However, on August 29, 2024 the Board reached out to the Coast Guard and requested a copy of the applicant's signed and notarized August 2, 2016 Oath of Office because the Oath of Office PSC submitted with their memorandum to this Board was blank. The Board was informed on August 29, 2024 that the Coast Guard could not locate the applicant's most recently executed Oath of Office although all of the applicant's other oaths were included in his Personnel Date Record (PDR).

VIEWS OF THE COAST GUARD

On October 22, 2022, a judge advocate (JAG) of the Coast Guard submitted a memorandum in which he recommended that the Board grant partial relief and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC argued that pursuant to a March 16, 2016 memorandum from RPM, the applicant's request to affiliate with the Coast Guard Reserve and obtain a Reserve commission was approved. PSC explained that the applicant was informed in the memorandum that he was offered a commission as a LT and that his Reserve date of commission shall be no earlier than the date the applicant was separated from the service or the date he executed his oath, whichever came later. Accordingly, PSC argued that the applicant's DOR would be the same as the date he executed his oath. PSC explained that within this same memorandum the applicant was directed to "take the completed accession documents and a copy of this memo to your SPO for processing before your

separation date.” According to PSC, if the applicant incurred a break in service of greater than 24 hours, he was instructed in the memo to contact Coast Guard PSC RPM for further guidance.

PSC explained that in affiliating with the Reserve an accession is required and the applicant had 90 days to access into the Reserve or his authorization would be cancelled. PSC stated that pursuant to the member’s information page (MI Page) in Direct Access the applicant was rehired on August 2, 2016. PSC argued that the applicant’s Reserve Commission Authorization issued on April 18, 2008 the applicant’s DOR is listed as May 21, 2007 which is erroneous and should show as August 2, 2016.¹ Based on this memorandum, the Coast Guard recommended that the Board change the applicant’s DOR from May 21, 2007 to August 2, 2016.²

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 28, 2023, the Chair sent the applicant a copy of the Coast Guard’s views and invited him to respond within thirty days. The Chair received the applicant’s response on December 27, 2023.

The applicant alleged that the one month gap of break in service showing in his record is an administrative error on the part of the Coast Guard. The applicant contended that despite the Coast Guard’s claims that he did not follow the steps outlined in their memorandum prior to his departure from active duty, he did. According to the applicant, prior to leaving active duty in June 2016 he physically went to RPM-1’s office in headquarters and signed all the required paperwork, including an Oath of Office. The applicant stated that his reasoning for going directly to RPM-1 was to prevent this exact scenario from taking place.

The applicant alleged that this is not the first Oath of Office that the Coast Guard has lost of his, but is in fact the third Oath of Office that the Coast Guard has lost. The applicant alleged he has followed the process every time that he has accessed in either the Reserve or Active Duty. The applicant alleged that the information PPC is relying on comes from Direct Access which is often wrong and or manually updated. The applicant argued that the Officer Accession process states that not only in the manual but also in Coast Guard messaging that a DOR shall not change unless there is an Oath of Office. The applicant claimed that there is no Coast Guard policy in existence that states absent an Oath of Office the Coast Guard can use Direct Access to determine an individual’s DOR. The applicant contended that regardless of whose responsibility it was to assess him properly, it does not negate the fact that the policy states an Oath of Office is required to change a DOR. In addition, the applicant claimed that changing his DOR as suggested by the Coast Guard could have serious financial repercussions as well as impact other service

¹ The Board is confused as to why the Coast Guard was relying on a memorandum from April 18, 2008 approving a Reserve commission that the applicant received upon his departure from active duty on August 1, 2008. All of the instructions contained within this memorandum related to his 2008 departure from active duty, which was August 1, 2008 and conflict with the information contained in the March 16, 2016 memorandum approving the applicant’s recently submitted request to join the Coast Guard Reserve. The Coast Guard submitted this April 18, 2008 memorandum in support of their package and position that the applicant’s DOR should be backdated but this appears to be an error or oversight by the Coast Guard.

² In this unclear why the applicant’s direct access member information report continues to reflect a DOR of May 21, 2007. A review of the applicant’s official military personnel file reflects that all of the applicant’s Officer Evaluation Reports (OERs) beginning in 2016, after he entered the Reserve, list a DOR of August 2, 2016.

entitlements. The applicant contended that the Coast Guard has not fully understood all of the unintended consequences from this error.

To support his application, the applicant pointed to his experience as a logistics officer and other errors he or other service members face while serving. However, these arguments do not prove that the Coast Guard erred or that his DOR is erroneous. Accordingly, for efficiency and clarity, those arguments will not be summarized here.

APPLICABLE LAW AND POLICY

Article 1 of the Coast Guard Officer Accession, Evaluations, and Promotions Manual, COMDTINST M1000.3A (September 2013),³ provides the following guidance on Reserve commissions after an officer has been separated due to having multiple non-selections on the Active Duty Promotion List (ADPL):

1.G. Appointing Regular Coast Guard or Navy Officers to the Coast Guard Reserve.

1. General. Under regulations prescribed by the Secretary, a former commissioned officer of the Coast Guard or Navy may, if otherwise qualified, be appointed as a reserve officer of the Coast Guard. (10 U.S.C. § 12206).

...

1.G.2. Application Procedures.

1.G.2.a. Who May Apply.

...

3. Regular Officer Twice Non-Selected. Regular officers who have been twice non-selected on the active duty promotion list (ADPL), who are not retirement eligible, and are scheduled for discharge.

...

1.G.2.c. Selections.

Requests for reserve commissions under this program will be considered by a panel convened at CG PSC-RPM. This panel meets approximately 4 times a year, as needed. The panel will review each applicant’s entire Personnel Data Record (PDR) and may:

- (1) Approve the request,
- (2) Conditionally approve the request, offering a reserve commission at the same grade held while a member of the regular Coast Guard or Navy, but assigned a different date of rank,
- (3) Conditionally approve the request, offering a reserve commission, but at a lower grade than previously held, or

³ The next COMDTINST M1000.3A issued was not until November 2016, after the applicant’s commission in August of that same year. Accordingly, this manual was the law and regulation applicable to the applicant’s DOR.

(4) Disapprove the request.

1.G.2.d. Date of Rank Determination.

...

2. Approved Appointment to Same Grade Upon Twice Non-Selected. If applicant, who has multiple non-selections on the ADPL and is discharged from active duty, is approved with an appointment to the same grade, the date of rank will be the date the applicant signs their oath for a reserve commission.

...

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 is 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 alleged that the Coast Guard erroneously changed his date of rank from May 21, 2008 to August 2, 2016. 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.⁴ 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.”⁵

5. The Board’s review of the record shows that from the time the applicant received his commission on May 21, 2003 he transitioned between the Coast Guard Reserve and active duty on multiple occasions. The last transition the applicant made was on his separation from active duty on June 30, 2016 for twice failing selection to LCDR. A review of the record further shows

⁴ 33 C.F.R. § 52.24(b).

⁵ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

that on March 16, 2016, prior to his departure from active duty, the applicant was informed via a memorandum from RPM-1 that his request for a Reserve commission had been approved and that he had 90 days from the date he was released from active duty to complete his accession into the Coast Guard Reserve. After this, it is unclear what happened or when the applicant signed his actual Oath of Office because it is missing from his personnel data record. The Coast Guard has alleged that the applicant signed his Oath of Office on August 2, 2016, but was unable to locate or provide a copy of the applicant's oath to the Board and the applicant was not given a copy of the oath when he submitted it to RPM-1. Regardless of when the applicant actually signed his oath, in August or June 2016, the Coast Guard should have recorded that oath and preserved a copy in the applicant's personnel file, but the Coast Guard failed to do so. When contacted by the Board on August 29, 2024, who requested a copy of the applicant's August 2015 Oath of Office, the Coast Guard was unable to locate the oath.

The record's submitted by the Coast Guard to establish that they performed their duties as required by policy relate to the applicant's August 2, 2008 accession, not his August 2016 accession. The facts as they have been presented to the Board indicate that the Coast Guard erroneously relied on the applicant's August 2008 memorandum of accession to determine his DOR instead of his 2016 accession.

Regarding the applicant's request for a backdated DOR, the Board finds RPM-1's March 16, 2016 memorandum, "Reserve Commission," instructive. Within this memorandum the applicant was informed that, "Based upon your approved active duty Separation Authorization, your last day of active duty is 30 June 2016. Your Reserve date of commission shall be no earlier than the date you have separated from the service or the date you execute your oath, whichever comes later. **Your date of rank will become the date you execute your oath, in accordance with 1.G.2.d.(2) of reference (a).** Article 1.G.2.c.2. of the Officer Accessions, Evaluations, and Promotions Manual, COMDTINST M1000.3A, states:

Requests for reserve commissions under this program will be considered by a panel convened at CG PSC-RPM. This panel meets approximately 4 times a year, as needed. The panel will review each applicant's entire Personnel Data Record (PDR) and may:

...

(2) Conditionally approve the request, offering a reserve commission at the same grade held while a member of the regular Coast Guard or Navy, **but assigned a different date of rank**...(emphasis added.)

Article 1.G.2.d. "Date of Rank Determination" of the same manual states that for approved appointments for the same grade upon twice non-selected officers, "If applicant, who has multiple non-selections on the ADPL and is discharged from active duty, is approved with an appointment to the same grade, **the date of rank will be the date the applicant signs their oath for a reserve commission.** (Emphasis added.) Accordingly, pursuant to the policy in effect at the time,⁶ the applicant's new DOR would have been the date he either left active duty or signed his Oath of Office, whichever came later. The applicant cannot claim that he was surprised by the 2016 change to his DOR because he was informed of this in the March 16, 2016 memorandum approving his

⁶ The applicant cited to manual and ALCOASTs that were published after his 2016 Reserve commission and were therefore not applicable to his claim.

Reserve commission. Further, all the applicant's OERs issued after he joined the Reserve in 2016 note a DOR of August 2, 2016.

The applicant has alleged that he went into RPM-1's office prior to his discharge in June 2016 and submitted his accession paperwork in accordance with the instructions provided in RPM-1's March 16, 2016 memorandum. The applicant stated that it is not his fault that RPM lost his paperwork and he should not be penalized for their errors. As it stands, the Coast Guard is unable to present the Board with the applicant's Oath of Office by which his official DOR would have been determined. Therefore, the Board finds the applicant's claims that the Coast Guard lost his 2016 Oath of Office persuasive evidence that the Coast Guard did in fact lose his originally signed oath.

Because the Coast Guard was unable to locate the applicant's Oath of Office at issue here, the Board finds that it is in the interest of justice to backdate the applicant's DOR from August 2, 2016 to July 1, 2016, the date he would have entered the Reserve following his discharge from active duty. The applicant is not entitled to have his DOR backdated to his August 2, 2008 commission because the policy in effect at the time did not provide for such relief. The Coast Guard, though possibly a month late, correctly determined that the applicant's new DOR should have been in 2016 not 2008 as outlined in the March 16, 2016 memorandum. Whether that should be August or July, the Coast Guard has failed to preserve the presumption that it carried out its duties "correctly, lawfully, and in good faith."⁷ Accordingly, the Board finds that the applicant has proven, by a preponderance of the evidence, that the Coast Guard lost the applicant's 2016 Oath of Office.

6. For the reasons outlined above, the applicant has met his burden, as required by 33 C.F.R. § 52.24(b), to overcome the presumption of regularity afforded the Coast Guard that its administrators acted correctly, lawfully, and in good faith.⁸ He has not proven, by a preponderance of the evidence, that the Coast Guard erroneously changed his date of rank from 2008 to 2016. However, he has shown that the Coast Guard erroneously charged him with a break in service from July 1, 2016 through August 1, 2016.⁹ Therefore, the Coast Guard should remove the break in service and backdate his date of rank to reflect July 1, 2016 the first day he was eligible to be commissioned in the Reserve following his discharge from active duty on June 30, 2016.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁷ *Arens*, 969 F.2d 1034, 1037 (Fed. Cir. 1992).

⁸ *Muse v. United States*, 21 Cl. Ct. 592, 600 (1990) (internal citations omitted).

⁹ *Hary*, 618 F.2d at 708.

ORDER

The application of former LT [REDACTED] [REDACTED] USCG, for the correction of his military record is denied but alternate relief is granted. The Coast Guard shall –

- Correct the record to show the applicant completed the necessary accession documents and executed the oath of office on or before June 30, 2016,
- Remove the July 1, 2016 to August 1, 2016 break in service,
- Backdate the applicant’s date of rank from August 2, 2016 to July 1, 2016, and
- Ensure that the applicant receives a new Statement of Credible Service reflecting the changes.

September 19, 2024

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