

**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. 2016-076**



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**FINAL DECISION**

This proceeding was conducted according to 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 22, 2016, and assigned it to staff attorney [REDACTED] to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated April 7, 2017, 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, an active duty member in the Coast Guard, requested that the Board correct his military record by canceling his five-year reenlistment contract dated April 25, 2014, and allowing him to immediately separate from the Coast Guard. The applicant requested that the Board "fairly consider [his] circumstances" and allow for his immediate separation. He stated that his current situation is the result of "improper counsel, broken promises, and the incorrect application of Coast Guard policy."

**Applicant's Summary of Events**

The applicant explained that in early 2014, his command solicited members to attend the [REDACTED] The course was scheduled to run from July 7, 2014, through January 8, 2015. The applicant stated that his command told him that the course required a four-year service obligation and promised him a four-year geographic stabilization at his current station. Because the applicant was interested in staying in his geographic location, he decided to attend the course. He stated that on April 24, 2015, he signed a five-year reenlistment contract in order to meet the four-year service obligation, plus the length of the six-month course.

While attending the course, the applicant experienced "some stress-related personal issues that resulted in poor academic performance." The applicant was disenrolled on July 17,



2014, due to poor academic performance. Upon returning from [REDACTED] the applicant alleged that his command verbally promised to reduce his service obligation by two years, making his end of enlistment (EOE) April 24, 2017 (as opposed to 2019).

In June 2015, the applicant was tentatively offered a position with the [REDACTED]. The applicant stated that he decided to pursue the opportunity because he believed that his EOE was April 24, 2017. He stated that he informed his command that he had been tentatively offered the position and that he intended to separate from the Coast Guard. At this time, he discovered that his service obligation date had not been changed and he became concerned he would not be able to accept the position with [REDACTED]. The applicant stated that he expressed his concerns to his command, and they assured him that he would be able to separate and to take the civilian job.

In December 2015, the applicant learned he had passed the polygraph and psychological evaluations for the [REDACTED] position. He again expressed his concerns to his command regarding his uncorrected EOE. The applicant stated that his Executive Officer (XO) contacted the Enlisted Personnel Management (EPM) Separations Office regarding the situation. EPM reportedly stated that the applicant's obligation date "would not be an issue and that [the applicant] would be able to separate." In January 2016, the applicant received a firm offer from [REDACTED] with a start date of March 7, 2016.

The applicant stated that he received Permanent Change of Station (PCS) orders to a unit in another state on January 15, 2016. At the same time, the applicant stated, his command submitted his separation request to EPM. He stated that his command later contacted EPM and received "no indication that [his] uncorrected service obligation date would be an issue and that they still intended to separate" him from the Coast Guard. On February 1, 2016, the applicant accepted the position with [REDACTED].

On February 12, 2016, the applicant received a denial of his separation request from EPM. The memorandum stated that the applicant's reenlistment contract could not be cancelled in accordance with COMDTINST 1000.2, the Enlisted Accessions, Evaluations and Advancements Manual, section entitled "Canceling an Extension Agreement After an Extension Begins." The applicant noted that EPM stated that a reenlistment contract cannot be cancelled for the convenience of the government once it has begun. EPM also stated that there is no mechanism for altering or cancelling a contract, so the original statement to the applicant promising to reduce his service obligation could not have been honored. Therefore, the applicant stated, he was required to PCS to a different state and lose his job opportunity with [REDACTED].

#### **Applicant's Complaints and Allegations**

The applicant has several complaints about the way his reenlistment contract was executed. The first is that according to the Performance, Education, and Training Manual, members assigned to training of 20 weeks or longer "must have, *as of the completion date* of the class, at least two years of service remaining...or two weeks service remaining for each week of training."<sup>1</sup> (Emphasis added). The applicant argued that "as of the completion date of class"

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<sup>1</sup> COMDTINST M1500.10C, Article 8.A.4.b.



means that the service obligation must be obligated by the time the course is completed, not prior to its start. He stated that had he not reenlisted, his EOE would have been November 23, 2015, which would have given him more than enough time to take the course which was scheduled to end in January 2015. He argued that he should have been required to obligate service before the completion of the class. The applicant claimed that he “only reenlisted prior to attending the course because Coast Guard policy was misrepresented and [he] received improper counseling.” He further alleged that another member attended the same course and he was not required to obligate four years until two days prior to completion of the class. The applicant stated that this is a prime issue, as he did not finish the class. Therefore, he argued, had he not been required to obligate service prior to attending the class, he never would have obligated the service.

Second, the applicant argued that the Coast Guard failed to follow through on the verbal promise to reduce his service obligation from April 24, 2019, to April 24, 2017. The applicant claimed that when he returned to his command after being disenrolled from [REDACTED] his command told him that his service obligation would be reduced by two years. The date was never “formally corrected” and the applicant stated that he did not discover the alleged error until he received a tentative job offer from [REDACTED] in June of 2015.

The applicant’s third allegation is that, had his EOE been changed to April 2017 as promised, he would have been able to separate from the Coast Guard early in order to take the position with [REDACTED]. He argued that pursuant to the Military Separations Manual, he would have been able to separate as a result of failing to obligate service required for a PCS.<sup>2</sup> According to Article 1.B.12.a.(19), failure to “obligate required service within five working days of permanent change of station orders issuance” is grounds for separation. Furthermore, the applicant argued, according to the Military Assignments and Authorized Absences Manual, members above E-3 and above with less than six years of active duty are required to have at least one year of obligated service remaining in order to report to a new unit.<sup>3</sup> The applicant stated that he received a PCS order on January 15, 2016, with a report date of July 1, 2016. If his EOE had been corrected to April 2017, then he would have had 9 months and 24 days remaining as of his report date to the new unit. Therefore, he argued, if he did not extend his contract he would have been eligible for early separation for failure to obligate service within five days of January 15, 2016.

Fourth, the applicant argued that EPM cited the wrong policy regarding his early separation request. The applicant stated that EPM cited the Enlisted Accessions, Evaluations, and Advancements Manual, Article 1.B.6.a. titled “Canceling an Extension Agreement After an Extension Begins” as the reason the applicant’s contract could not be cancelled. The policy states that a “properly executed Agreement to Extend Enlistment, Form CG-3301B, is a valid modification to an enlistment contract.”<sup>4</sup> Article 1.B.6.a. further states that “an extension of enlistment may not be canceled after it begins to run, either for the convenience of the government or the member.” The applicant stated that Article 1.B. of this manual only pertains to extension agreements, and not reenlistment contracts. He noted that he did not sign a CG-3301B, but instead signed a reenlistment form DD4/2. He claimed that there is no similar Coast

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<sup>2</sup> COMDTINST 1000.4.

<sup>3</sup> COMDTINST 1000.8, Article 1.B.6.b.(2).

<sup>4</sup> COMDTINST 1000.2, Article 1.B.6.



Guard policy that prevents the cancellation of a reenlistment contract after it has begun. The applicant further stated that he pointed this out to EPM, who conceded that this was the incorrect policy reference, but failed to provide clarification or justification afterwards.

The applicant also stated that EPM was incorrect in stating that there was no mechanism to alter or cancel the applicant's reenlistment contract, so the command's promise to reduce his service obligation could not have been honored. The applicant pointed to ALCOAST 340/15, which was issued in August 2015, entitled Obligated Service Requirement to Attend Class A School. Section 3 states that members who are disenrolled for academic purposes may request that Commander, PSC rescind or reduce the obligated service requirement. The applicant stated that he realized this ALCOAST only pertains to Class "A" Schools. However, he alleged that because this ALCOAST does identify an authority who can alter service obligations, EPM was incorrect to state that there is no mechanism to alter a reenlistment contract. Additionally, the applicant noted that the Personnel Records Review Board (PRRB) has the authority to make such changes as well.<sup>5</sup> He stated that the PRRB has a one-year statute of limitations, though, so his request for relief had to be sent to the BCMR.

In conclusion, the applicant stated "I understand that I technically have a valid contract, but the circumstances of its enforcement are unjust. I was required to reenlist under false pretenses to meet a service requirement for training I could not complete. Additionally, the Coast Guard made a promise to reduce my service obligation and failed to follow through." Therefore, the applicant requested that the Board cancel his reenlistment contract and allow for his immediate separation from the Coast Guard.

#### **Documents Submitted by Applicant in Support of his Claims**

The applicant submitted several documents in support of his allegations. The applicant provided a copy of the memorandum documenting his [REDACTED] drop. The document states that the applicant attended the training for a total of nine days, and dropped the course on July 17, 2014.

A letter from the Executive Officer of the applicant's unit, a lieutenant, states the following:

Please note that the following is my personal understanding of the situation with [the applicant] and does not reflect the official positions of [the unit] or the United States Coast Guard. [The applicant] was selected to attend the [REDACTED] in July 2014 and, due to the length of the course, executed permanent change of station (PCS) orders to [the course's location]. In August 2014, he was academically disenrolled from the course and received PCS orders to return... It was my understanding at the time that, due to his failure to complete the course, that his obligated service commitment was reduced to two years instead of four years. In late 2015, it became clear that [the applicant] desired to separate from the Coast Guard and pursue a civilian career with the [REDACTED]. Members of the command had numerous discussions with the assignment officer and separations branch prior to orders ever being issued, and I was given the impression that [the applicant] would be able to complete a convenience of the government discharge if he elected to separate in lieu of accepting orders. In January 2016, [the applicant] received orders and immediately submitted a separation in lieu of orders memo to the command which was approved and submitted to both the assignment officer and the Coast Guard separations branch. In follow on conversations with both entities, I was again given the impression that the separation would be

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<sup>5</sup> COMDTINST 1070.1, Manual on Correcting Military Records.



approved, however they were both noncommittal. The separation was disapproved on 12 February 2016. The disapproval was a surprise to me and other members of the command since we were consistently given the impression that it would be approved. Unfortunately, all of the impressions that I had were based on verbal conversations and my personal review of the regulations; no promises or assurances were made in writing. As a result, [the applicant] is in an unfortunate situation and his morale has suffered significantly.

The applicant provided a copy of the separation request submitted by his command. It is dated January 15, 2016. The memo states that the applicant “desire[d] to separate in lieu of orders.” The memo states that the request was recommended “due to the best interests of the member.” Additionally, it states that the applicant’s current enlistment ran until July 17, 2019.<sup>6</sup> A copy of the response from EPM was also provided, denying the applicant’s request for early separation. The memorandum states that the applicant was to execute his PCS orders and denied the applicant’s request to cancel his reenlistment contract. The memorandum also gave a point of contact at EPM.

The applicant emailed the point of contact at EPM to ask follow-up questions regarding the denial. He provided a copy of the email messages. In the applicant’s first email to the EPM contact, he requested clarification as to why his separation request had been denied. The applicant brought up the incorrect citation regarding an extension of an enlistment, versus a reenlistment. Many of the remaining questions and complaints he raised in the email were the same as those as those before the Board. The EPM contact replied and apologized for the incorrect reference regarding the extension versus reenlistment, but did not provide a different reference. The contact stated that the applicant would receive a corrected memorandum.<sup>7</sup> The contact further stated that the applicant had a valid reenlistment contract, and “due to the needs of the service [he is] expected to fulfill the terms of that contract.” The applicant responded and asked if the fact that the wrong citation was referenced affected the decision to deny his request. He also stated that he felt he should be provided with a fair explanation of why his request was denied. The EPM contact replied that he would discuss matters with the applicant’s chain of command.

A copy of the applicant’s firm offer letter from the [REDACTED], dated January 27, 2016, was provided. It states that the applicant was scheduled to begin employment on March 7, 2016.

The applicant also provided the orders to [REDACTED] for another member. The orders were for a course in 2015, and the member was also an [REDACTED]. The applicant highlighted the portion of the orders that state “This assignment requires minimum four (4) years OBLISERV following graduation.”

### **Additional Documentation**

On April 29, 2016, the applicant submitted an additional statement and supporting documentation. He stated that he wished to address a claim that had been made by members in his command that [REDACTED] is not classified as an “Advanced Training,” also known as a “C-

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<sup>6</sup> The applicant’s EOE should have been April 24, 2019, not July 17, 2019. There was an error made in the applicant’s military record.

<sup>7</sup> According to the applicant, he never received a corrected memorandum.



School.” The applicant provided a C-School spreadsheet, course list, print-out from a Coast Guard web page, and email conversation to prove that [REDACTED] is a C-School.

### SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on February 24, 2009, for a four-year period, through February 23, 2013. Subsequently, he signed three extension contracts totaling 33 months for various purposes: He extended his enlistment for 6 months through August 23, 2013, for 3 months through November 23, 2013, and then for 24 months through November 23, 2015. On April 25, 2014, the applicant signed a five-year reenlistment contract to obligate sufficient service to be able to attend [REDACTED], making his EOE date April 24, 2019. His transfer orders to [REDACTED], dated March 14, 2014, state that the “assignment requires a minimum four (4) year OBLISERV.” The dates of assignment are from July 7, 2014, to January 8, 2015. The orders further state that the obligated service requirements “for the purposes of PCS orders shall be executed within 5 days of orders issuance.” Also on March 14, 2014, the applicant received an email with his PCS orders attached. The email stated the he would return to his unit after graduation. A few minutes after that email, a YN emailed the unit’s Senior Chief, cc’ed the applicant, and stated that the applicant had to reenlist to cover the required service obligation because he could not extend his original enlistment for more than six years.

On July 7, 2014, the applicant began [REDACTED]. He was disenrolled on July 17, 2014. His Student Permanent Drop Record notes that he spent 9 days in training, and that he had a class standing of [REDACTED]. Following his disenrollment, he received orders on July 23, 2014, to return to his previous unit through July 1, 2016.

On January 15, 2016, the applicant received PCS orders to a unit in another state with a report date of July 1, 2016, and a rotation date of July 1, 2020. The orders stated that the assignment required a minimum of 1 year of obligated service. The orders further stated that per “ALCOAST 173/10, for members not in a retirement eligible status, or serving on an indefinite enlistment contract, the OBLISERV requirement for the purposes of PSC orders shall be executed within 5 days of orders issuance...Failure to OBLISERV may result in the member being separated prior to the expiration of their enlistment by reason of convenience of the government.”

On January 15, 2015, the same day the PCS orders were issued, the applicant’s command submitted a Separation Request in Lieu of Orders. The request stated that the applicant “desires to separate in lieu of orders...recommend approval due to the best interests of the member.” On February 12, 2016, EPM denied the request, and stated that the applicant must execute his PCS orders and “separate on his expiration of enlistment.” Additionally, EPM denied the request to cancel the applicant’s reenlistment contract. The letter stated that the applicant may seek relief through BCMR.

### VIEWS OF THE COAST GUARD

On August 10, 2016, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief. He adopted the findings



and analysis provided in a memorandum prepared by the Personnel Service Center (PSC) and added that requiring four years of obligated service is not contrary to the Military Assignments and Authorized Absences Manual. Article 8.A.4.a. states that personnel must “have, as of the completion of the date of the class, *at least* two years of service remaining.” (Emphasis added). The JAG argued that this does not preclude the Coast Guard from setting a requirement for additional service pursuant to specific orders.

Additionally, the JAG pointed out that the applicant argued that the same article mandates the timing for when a contract for obligated service must be entered into. The JAG argued, however, that there is no such provision. The purpose of the clause “at the completion of the class” refers to the beginning date for the computation of the obligated service, meaning the time spent attending school does not count towards the obligated service. The JAG also pointed out that the applicant’s orders stated that the obligated service requirements must be executed within five days of the orders’ issuance. Therefore, the JAG stated, it was clear that the obligated service had to be executed prior to attending the course.

Lastly, the JAG argued that the applicant’s allegation regarding a mechanism by which to cancel or modify reenlistments is erroneous. The Coast Guard created a policy to cancel enlistment extensions and reenlistments for students who are academically disenrolled from “A” schools.<sup>8</sup> However, the JAG claimed, the existence of this policy “does not create any right for the applicant to cancel his reenlistment.” The Coast Guard’s policies for cancelling enlistment contracts are narrowly tailored exceptions that do not apply to the applicant’s situation. Therefore, the JAG recommended no relief in accordance with PSC’s memorandum.

PSC likewise recommended that no relief be granted in this case. PSC stated that Article 1.B.6.b.(1) of the Military Assignments and Authorized Absences Manual states that Assignment Officers (AOs) will not normally transfer members above an E-3 with fewer than six years of active duty unless the member reenlists or extends to have enough obligated service for a full tour upon reporting to a new unit. PSC argued that the applicant was an E-5 with less than six years of active duty in 2014. The applicant received orders to attend [REDACTED] on March 14, 2014, at which time he had 5 years and 21 days of total active service. Therefore he would have had to reenlist or extend to have enough obligated service for a full tour in order to receive orders to transfer. PSC argued that to accept orders to attend school, the applicant voluntarily signed a five-year extension contract.

According to the applicant’s PCS orders to [REDACTED], four years of obligated service were required for the assignment. PSC stated that orders to the [REDACTED] “have customarily required a minimum of four years of obligated service, as designated by the AOs” in connection with the program managers. PSC noted that according to the Enlisted Accessions, Evaluations, and Advancements Manual, the total of all extensions may not exceed six years (72 months).<sup>9</sup> Because the applicant had already extended his initial enlistment for 33 months through

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<sup>8</sup> An “A” School is the school a member attends after boot camp to earn a skill rating, such as gunner’s mate (GM) or intelligence specialist (IS), and become a petty officer instead of a “non-rate” seaman. A “C” School is a more advanced school that may be required for promotion or for assignment to a special billet. See COMDTINST M1000.2, Article 3.

<sup>9</sup> COMDTINST M1000.2A, Article 1.B.1.b.



November 23, 2015, he was eligible to extend it for 39 more months, through February 23, 2019. In order to accept the orders to [REDACTED] the applicant needed to obligate service until January 8, 2019, which is four years after the end date of the course. Therefore, PSC stated, the applicant could have extended his enlistment as opposed to signing a reenlistment contract in order to meet the obligated service requirement for [REDACTED].

The applicant signed a DD Form 4, Enlistment/Reenlistment Contract on April 25, 2014. PSC noted that the applicant argued that he was improperly counseled regarding his option to extend versus reenlist. PSC stated that there is no evidence to show that the applicant was improperly counseled, and absent evidence to the contrary Coast Guard officials are presumed to have acted correctly and lawfully.<sup>10</sup> PSC argued that the applicant voluntarily signed the reenlistment contract, which unlike an extension, cannot be cancelled following academic disenrollment from an advanced training school.

Regarding the applicant's contention that the Enlisted Accessions, Evaluations, and Advancements Manual allows an appropriate authority to cancel an extension agreement before the extension begins to run, PSC argued that this policy is inapplicable to the applicant's situation.<sup>11</sup> This policy applies when a member is on extension contract, not a reenlistment contract. PSC stated that there is "no Coast Guard policy that allows for early termination of a valid enlistment contract due to disenrollment from an advanced training school for academic reasons."

PSC stated that members who are disenrolled from "A" School for academic reasons may request to have their obligated service requirement for "A" School rescinded or reduced.<sup>12</sup> While the applicant did obligate service, [REDACTED] is a "C" School, not an "A" School. Additionally, PSC noted that the ALCOAST allows members to *request* a reduction or rescission, and does not guarantee that their request will be granted, as such requests are dependent on the needs of the service. For these reasons, PSC and the JAG recommended granting no relief.

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

On August 12, 2016, the Chair sent a copy of the Coast Guard's advisory opinion to the applicant and invited a response within 30 days. In response to the advisory opinion, the applicant stated that he disagreed with the Coast Guard's recommendation in its entirety. He stated that the "Coast Guard has manufactured an argument based on policy distortions, obstruction and spurious statements."

#### **Applicant's Response Statement**

The applicant recounted the events surrounding the disputed reenlistment contract. He added that his command had a video teleconference with its parent command, and as a result the

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<sup>10</sup> The email from the YN stating that the applicant had to reenlist was not provided by the applicant until his response to the Coast Guard's advisory opinion.

<sup>11</sup> COMDTINST M1000.2A, Article 1.B.6.b.

<sup>12</sup> ALCOAST 340/15.



applicant was informed that the [REDACTED] was classified as a “Specialty School,” and not a “C” School. He stated that he was told the [REDACTED] manual references he cited were not applicable. This is why he provided the Board with the additional documentation proving that [REDACTED] is a “C” School.

The applicant went on to describe his efforts to obtain information and documentation that he felt were important to this case before the Board. He stated that he learned through speaking with other members who attended [REDACTED] that not everyone was required to obligate four years of service or to obligate service prior to attending [REDACTED]. The applicant made a great deal of effort to obtain the PCS orders of other members who attended [REDACTED], through speaking with members, making requests with his chain of command, and via a FOIA request.

Regarding the Coast Guard’s advisory opinion, the applicant argued that there is no basis to find that members must obligate service prior to attending [REDACTED] school, as the policy does not specifically require this. The applicant [REDACTED] intended that when service obligation is required prior to transfer, a training manual states it directly.<sup>13</sup>

The applicant also stated that PSC’s argument that the phrase “at least two years” authorizes an AO to issue service obligation requirements of more than two years is “a disingenuous reading of policy.” He stated that the section states that if double the course length is longer than two years, then the service obligation must be that length of time, but if double the length of the course is less than two years then the service obligation must be two years. He further stated the following:

It is a comparative statement based on an evaluation; the obligation is determined by the course length and has a minimum requirement of two years. I ask the Board to consider what the Coast Guard is arguing; how can it be possible to determine “whichever is greater” if “at least two years” means any number greater than two? If this were the case, “at least two years” could always be greater than two times the course length. That interpretation would render [REDACTED] policy incoherent because a comparison based on “whichever is greater” would be meaningless.

[REDACTED]

The applicant added that a training Standard Operation Procedure states, “For long term training: Members must have two years of service remaining after completion or two weeks of service for every week of training, whichever is greater.” The applicant also stated that an issue paper from 2013 states that “there is no policy basis in the Performance, Training, and Education Manual, COMDTINST M1500.10C for the Coast Guard to obligate service of 4 years to a member for [REDACTED] school.” The applicant stated that this issue paper had to be sent over the Coast Guard network due to U/FOUO markings, but the Board did not receive a copy of this document. The applicant ultimately argued that there is no policy to support a finding that service obligation for [REDACTED] can be an arbitrary amount of time exceeding two years or double the length of the course.

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<sup>13</sup> The applicant pointed to the Officer Aviation Training manual, which states that the “selected officer shall sign the appropriate obligated service statement prior to executing PCS orders to flight school.” He also pointed to the Advanced Education Manual which states that “enlisted personnel must execute an extension/reenlistment prior to being issued orders...to meet the [REDACTED] ated service requirements.”



The applicant pointed out [REDACTED]ake PSC made in its advisory opinion. When discussing the applicant's service requirements for [REDACTED], PSC used the beginning date of the course, as opposed to the end date as required by policy. The applicant pointed to [REDACTED]'careless contradiction" as evidence that the Coast Guard is "attempting to force separate policy governing training schools" onto him.

Next, the applicant argued that the "subject of the training policy in question" is Military Personnel, which refers to the service member [REDACTED]e AO and program manager are not referred to, and "consequently the policy does not afford either any au [REDACTED]." He added that there is "no written authority" that allows an AO or program manager to supers [REDACTED]pecifically defined service obligations.

Regarding the applicant's reenlistment, he claimed that PSC's contention that he voluntarily chose to reenlist was false. The applicant provided [REDACTED]mail from a YN which stated that the YN saw that the applicant's [REDACTED] orders required four years of obligated service. The YN stated the applicant "currently has an EOE of 11/23/2015. He has extended off his contract for a total of 2 years and 9 months. Since he cannot extend more than 6 years off a contract he will need to reenlist."<sup>14</sup> (See attached.) The applicant stated that the YN's assessment was incorrect.<sup>15</sup> He argued that if his orders "reflected the correct requirements" then his service obligation would have ended on January 8, 2017,<sup>16</sup> and he would have been able to extend to meet this requirement. Additionally, even if there was a policy to support a four-year requirement, the applicant stated that he still had enough time left to extend his contract to cover the obligation. The applicant argued that if he had not been improperly counseled, he would have been on an extension contract. He argued that had he signed an extension contract instead of a reenlistment contract, following his academic disenrollment he would have been able to rescind or reduce his obligated time.

Regarding PSC's argument that [REDACTED] orders are "customarily assigned a four year service obligation," the applicant argued that this is factually inaccurate. Based on the applicant's FOIA results, he stated that only 17 out of 34 [REDACTED] orders provided to him had service obligations of four years. He asked "how can there be a 'custom' when there is no consistency in application of policy with only half the service obligations being four years?" The applicant further argued that there is no place for 'customs' because there is already clearly defined policy. He stated that the point of policy is to have clear expectations and to keep commands from governing arbitrarily.

[REDACTED]

In conclusion, the applicant reiterated that he believed the Coast Guard has misconstrued their policies in order to justify their actions. He stated that pointing out that he "voluntarily" signed a contract sho [REDACTED] be a flaw to his argument, as he doubted that any Coast Guard contracts are signed under legitimate duress. However, his argument is that he was "baited" into signing a reenlistment contract with the promise of geographic stabilization. He stated he was "induced into a service obligation as the result of false pretenses, incorrect information, and

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<sup>14</sup> The applicant provided a copy of this email.

<sup>15</sup> This aligns with PSC's finding as well. The applicant could have extended, as opposed to reenlisting, and still met the four-year service obligation requirement.

<sup>16</sup> Two years after the end of the [REDACTED] class.



misrepresentations of Coast Guard training policy.” He stated this is sufficient legal justification to void a contract. Lastly, he stated he has already served the amount of time he should have (through January 8, 2017, two years from the end of [REDACTED]), so he asked the Board to either cancel or reduce his contract so that he may be immediately separated.

### Additional Supporting Documentation

The applicant provided copies of various emails, documents, and his FOIA documents. Below is a list of the most pertinent documents to the applicant’s claims:

- Email dated March 14, 2014: “Attached are your PCS orders...for your 6 month [REDACTED] school. As previously discussed, you will be coming back to this unit upon graduation. Working to get written confirmation that you will be coming back...but we have received verbal confirmation that it will happen.”
- Email from a YN to the applicant and his Senior Chief, dated March 14, 2014: “I saw that [the applicant’s] orders require 4 years of obliserv. [The applicant] currently has an EOE of 11/23/2015. He has extended off his contract for a total of 2 years and 9 months. Since he cannot extend more than 6 years off a contract he will need to reenlist.”
- Emails between applicant and EPM, dated from December 1 to 7, 2015: EPM personnel emailed the applicant asking when he planned “to jump.” The applicant responded that he spoke to the [REDACTED] recruiter and was still working on getting an exact date. EPM personnel responded that he could hold off on filling the applicant’s position a little longer but would need to know the applicant’s expected end date within a few weeks.
- Emails between EPM and the applicant’s command dated from February 2 to 4, 2016: EPM personnel emailed the applicant’s command and stated that the applicant had too much remaining service, until 2019, so he could not be released while the rate was short-handed. EPM personnel stated that the request for early separation would likely not be approved. He stated “Sorry it’s not what we hoped for how things would work out.”
- FOIA Response: The applicant had requested a copy of [REDACTED] orders to ascertain the obligated service required for attendance. Of the documents in which both the rate and the obligated service was viewable, minus one with a typo (stated “one (4) years”), below is a summary of the results:
  - Four members with a rate of [REDACTED]1 required obligated service of 4 years;
  - Five members with a rate of [REDACTED]2 required obligated service of 4 years;
  - Two members with a rate of [REDACTED]3 required obligated service of 4 years;
  - Two members with a rate of [REDACTED]1 required obligated service of 1 year;
  - One member with a rate of [REDACTED]1 required obligated service of 18 months;
  - One member with a rate of [REDACTED]2 required obligated service of 1 year;
  - One member with a rate of [REDACTED]2 required obligated service of 18 months;
  - One member with a rate of [REDACTED]3 required obligated service of 4 years; and



- One member with a rate of █3 required obligated service of 18 months.

### APPLICABLE REGULATIONS

The Enlisted Accessions, Evaluations, and Advancements Manual in effect in 2014 and most of 2015, COMDTINST M1000.2, states in Article 1.B.6. that an extension is a valid modification to an enlistment contract. Article 1.B.6.a. further states that an extension may not be canceled after it has begun to run, either for the convenience of the member or the government. Article 1.B.6.b.(1)(e) states that “extensions may be cancelled when a member agreed to extend to attend a resident school but is dropped from the course for academic reasons. However, do not cancel extensions to attend resident schools if the individual is dropped from the course of instructions or voluntarily withdraws except as noted in Article 1.B.6.b.(3)(b) of this Manual [which concerns only reservists].” Article 1.B.6.b.(2) states that a member’s CO should forward a request to cancel an extension contract to EPM with a full report of the circumstances and a recommendation. Article 1.B.2.a. states that an enlisted member who does not have sufficient obligated service remaining in his enlistment period “who applies for transfer to a Service school...shall signify in the application for training [his] willingness to execute the required extension...[T]he voluntary agreement to extend enlistment must be executed and accepted by the commanding officer before the transfer is effected.”

The Performance, Education and Training Manual, COMDTINST M1500.10C, Article 8.A.4., states that members assigned to training lasting 20 or more weeks “must have, as of the completion date of the class, at least two years of service remaining on current enlistment or period of active service or two weeks service remaining for each week of training (two times the duration of the course), whichever is greater.”

According to the Military Assignments and Authorized Absences Manual, COMDTINST M1000.8A, Article 1.B.6.a., service that is obligated for the purpose of PCS orders must be executed within five working days of issuance of the orders. Failure to meet obligated service requirements *may* result in the member being separated prior to the end of their enlistment for convenience of the government. Article 1.B.6.b.(1) states that “AOs normally will not transfer service members E-4 and above...with fewer than six years of active duty unless they reenlist or extend to have enough obligated service for a full tour on reporting to a new unit.” Article 1.B.6.b.(2) then states that members “E-4 and above with over six years of active duty are considered to be in a career status. Unless otherwise indicated, they are required to have one year of OBLISERV remaining upon reporting to the new unit.”

According to the Military Separations Manual, COMDTINST M1000.4, Convenience of the Government, Article 1.B.12.a. states that the Commander, PSC *may* authorize an enlisted member to separate for the convenience of the government for any of the listed reasons in this section. Article 1.B.12.a.(19) lists one of the reasons as “failure to obligate service within five working days of permanent change of station orders issuance in accordance with” Article 1.B.6. of COMDTINST M1000.8A. Article 1.B.7.b. states that a commanding officer may separate members up to three months prior to their end of enlistment based on an upcoming deployment, if an overseas member declines to reenlist, or if the member is immediately reenlisting. Article 1.B.8.a.(1) states that a commanding officer can authorize release up to 30 days early (or up to



90 days if the member also takes terminal leave) for “a member with a unique schooling or career opportunity he or she would lose if released on his or her normal enlistment expiration.”

## 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 was timely.<sup>17</sup>

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.<sup>18</sup>

3. The applicant alleged that the Coast Guard’s decision not to release him from his reenlistment contract is erroneous and unjust. In assessing allegations of error and injustice, 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.<sup>19</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>20</sup>

4. Early separation: The applicant claimed that EPM cited the wrong policy regarding his early separation request and that the Coast Guard erred in denying his request to rescind his reenlistment contract because the incorrect regulation was cited. EPM cited the Enlisted Accessions, Evaluations, and Advancements Manual, Article 1.B.6.a. titled “Canceling an Extension Agreement After an Extension Begins,” which pertains only to extension contracts, whereas he had signed a reenlistment contract. The more applicable regulation is Article 1.B.7.b. in the Military Separations Manual, which states that enlisted members may be separated from an enlistment up to three months early for certain purposes. However, the article cited by EPM is not irrelevant because it concerns separating members prior to their EOE in cases of extension contracts, and not reenlistment contracts. It is significant that the cited regulation does not mention reenlistment contracts, because the omission indicates that there is no mechanism to cancel or alter a reenlistment contract except within three months of the EOE as provided in Article 1.B.7.b. of the Military Separations Manual. In either case, EPM did not err by denying the applicant’s request to cancel or alter his reenlistment contract more than three months before his EOE.

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<sup>17</sup> 10 U.S.C. § 1552(b)

<sup>18</sup> *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).

<sup>19</sup> 33 C.F.R. § 52.24(b).

<sup>20</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).



5. Timing of reenlistment contract: The applicant is requesting that the Board reduce or cancel his reenlistment contract so that he may separate from the Coast Guard. His first argument is that he should not have been required to obligate service prior to attending the course, because the phrase “as of the completion date of class” in Article 8.A.4.b. in COMDTINST M1500.10C means that service must be obligated prior to the end of class, not prior to starting the class. As the Coast Guard pointed out in the advisory opinion, this phrase refers to when obligated service begins to run. Moreover, Article 1.B.2.a. of COMDTINST M1000.2 states that an enlisted member must have sufficient obligated service remaining before transferring to a service school. The applicant’s PCS orders specifically stated that the obligated service requirement had to be executed within five days of the order’s issuance, which is in accordance with Article 1.B.6.a. of COMDTINST M1000.8A. The Board finds that the applicant has not proven by a preponderance of the evidence that he should not have been required to obligate additional service before being transferred to [REDACTED] instead of before the completion of the course.

6. Two years vs. four years: The applicant also argued that the AO and program manager had no authority to require that he obligate service in excess of two years. He has not shown, however, that the phrase “at least two years” in Article 8.A.4.b. in COMDTINST M1500.10C means anything else than *at least* two years--i.e., that the obligated term of service must be at least two years and not less. It is a floor for measurement of time, not a ceiling. The Coast Guard must be able to determine service needs and require obligated service accordingly. The applicant’s FOIA request shows that all members with an [REDACTED] rate were required to obligate four years of service. The applicant argued that the FOIA response shows how arbitrary the service obligations were. However, the fact that the transfer orders of other members—who may have been in “career status” (with more than six years of service) or may have already had sufficient obligated service in their records—did not require four years of obligated service is not evidence that the Coast Guard committed an error or injustice by requiring the applicant to obligate four years of service to attend [REDACTED].<sup>21</sup> There is no policy to suggest that “at least” acts as a ceiling, as opposed to a floor, and the applicant was sent to [REDACTED] based on the expectation that he would perform another tour of duty for the Coast Guard, for which he would have had to obligate another four years of service pursuant to Article 1.B.2.a. of COMDTINST M1000.2. The Board finds that the applicant has not shown that PSC acted arbitrarily in requiring the applicant to obligate four years of service before accepting his orders to attend [REDACTED] school.

7. Command’s alleged promise: The applicant complained that his command failed to follow through on a promise to reduce his service obligation after his disenrollment from [REDACTED]. The applicant’s XO wrote on the applicant’s behalf that this was his understanding but also that the PSC Separations Branch and the [REDACTED] Assignment Officer were “both noncommittal” in communications about the applicant’s request. The applicant also submitted emails showing that at least one member at EPM expected him to “jump” but that his request to separate was denied. It is not clear from the record exactly what the applicant’s command told him, but the applicant has not shown that his command had any authority to change his contract with the Coast Guard by reducing the term from five years to three years. Article 1.B.6.b.(2) of COMDTINST M1000.2 clearly states that the command may forward such a request to PSC with a recommendation, not that the command may determine the length of the member’s contract.

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<sup>21</sup> COMDTINST M1000.8A, Article 1.B.6.b.



The applicant had entered into a binding reenlistment contract with the Coast Guard, and the Board can find no authority that would authorize his command to cut it short. Nor does the fact that in late 2015, the Coast Guard issued an ALCOAST with a policy regarding reducing the service obligations of members academically disenrolled from A Schools mean that the Coast Guard was obligated to reduce the applicant's reenlistment because he was disenrolled from C School due to personal issues after nine days.

8. Reenlistment vs. extension: On March 14, 2014, the applicant received an email that stated he was unable to extend his contract to meet the four-year service requirement. The applicant was told he would have to reenlist to meet the requirements. PSC noted, and the Board finds, that this information was in error. Under Article 1.B.1.b. of COMDTINST M1000.2A, the applicant was eligible to extend his original enlistment, which ended on November 23, 2013, for up to 72 months—through February 23, 2019, which is more than a month past the date he had to obligate service through to attend [REDACTED] school, January 8, 2019. The applicant argued that had he been given the choice, he would have extended his enlistment and not reenlisted. Had he extended, he would have been able to request the cancellation of his extension pursuant to Article 1.B.6.b.(1)(f) of COMDTINST M1000.2. The Board finds that the preponderance of the evidence shows that the Coast Guard did miscounsel the applicant in this regard. The Coast Guard informed the applicant that he had to reenlist to meet the service obligations, when he could have extended. The Board further finds that the applicant was thereby deprived of the opportunity to request a cancellation of his extension contract. Had he extended, the extension would have begun to run on November 24, 2015. He was academically disenrolled on July 14, 2014. Therefore he would have had more than enough time to make the request for cancellation of his extension before the extension went into effect.

9. In February 2016, PSC denied the applicant's request to shorten his reenlistment contract based on the policies in the Military Separations Manual that prohibit separation more than three months before the end of an enlistment.<sup>22</sup> This decision is evidence but not proof that PSC would have denied the applicant's request to cancel an extension contract if he had been allowed to extend, instead of reenlist, to obligate service to attend [REDACTED] School. In any event, the applicant would have had to have requested the cancellation prior to November 24, 2015, when his extension would begin to run.<sup>23</sup> The applicant stated that he had received a tentative job offer from [REDACTED] in June 2015, contingent on passing the required tests. The applicant learned in December 2015 that he had passed and that he would be receiving a firm offer, and the memo from his command officially requesting separation in lieu of orders is dated January 15, 2016. However, the Board is persuaded by the timeline of events that the applicant would have requested a cancellation of his extension prior to November 24, 2015, if he had been allowed to extend his enlistment (instead of reenlisting) to obligate service for [REDACTED] school in 2014. The applicant had begun discussing his plans to leave the Coast Guard in the summer of 2015, and if he had extended his enlistment, the Board is persuaded that the applicant would have taken the appropriate measures to request a cancellation of the extension.

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<sup>22</sup> COMDTINST M1000.4, Article 1.B.7.b.

<sup>23</sup> COMDTINST M1000.2A, Article 1.B.6.a., "An extension of enlistment may not be canceled after it begins to run."



10. Because the Coast Guard [REDACTED] erroneous advice regarding reenlistment versus extension—as proven by the yeoman’s email to the applicant dated March 14, 2014—may have deprived the applicant of the opportunity to have his extension contract cancelled before it went into effect, the Board finds that, in the interest of justice, the applicant’s service obligation should be reduced. He could have accepted the orders to [REDACTED] by signing a 38-month extension contract through January 23, 2019, instead of reenlisting. Therefore, in the interest of justice and given the unique circumstances of this case, the Board will reduce his service obligation to January 23, 2018. PSC has discretion as to further reducing this obligation given the applicant’s circumstances.

11. The Board finds [REDACTED] that the applicant should receive partial relief in the interest of [REDACTED] by reducing the applicant’s service obligation because the Coast Guard’s erroneous advice deprived him of the opportunity to obligate service by extending his enlistment and then requesting cancelation of the extension before it went into effect pursuant to Article 1.B.6.b.(1)(f) of the Enlisted Accessions, Evaluations, and Advancements Manual. The applicant’s reenlistment contract should be voided and replaced with a 26-month extension contract running from November 24, 2015, through January 23, 2018. The applicant’s end of enlistment date should be corrected January 23, 2018.

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

[REDACTED]



**ORDER**

The application of [REDACTED], USCG for correction of his military record is granted in part. The Coast Guard shall remove his April 24, 2015, reenlistment contract from his record as null and void and replace it with a 26-month extension contract running from November 23, 2015, through January 23, 2018. In the interest of justice, his end of enlistment date shall be corrected to January 23, 2018, but Commander, PSC may, at his discretion, separate the applicant earlier upon request.

April 7, 2017

