

**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. 2018-054**

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██████ LT

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**FINAL DECISION**

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case on November 29, 2017,<sup>1</sup> and assigned it to staff attorney ██████████ to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated September 28, 2018, 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 in the Coast Guard Reserve, asked the Board to correct his record by repaying him an overpayment he had received due to being assigned pay grade O-1E (the pay grade of an officer with prior enlisted service) when he was commissioned, instead of an O-1, and waiving the remainder of any additional debt.

The applicant asserted that the overpayment was a result of “errors performed by the administrative staff of the US Coast Guard Academy during [his] commissioning in September 2006.” He attended Reserve Officer Candidate Indoctrination (ROCI) from August to September 2006, and he claimed that he was commissioned as an O-1E upon completion of the program. He stated that he had previously served approximately seven years in the Coast Guard Reserve. He claimed that at ROCI the “instructors stated that all prior enlisted members who had serviced more than four (4) years would qualify for the “E” designator as prior enlisted members which included a pay increase.” The applicant stated that ROCI was a Reserve commission program so most of the students were prior enlisted Reservists. He stated that the instructors never specified that the previous service had to have been active duty. When the applicant graduated from the program, his leave and earning statement reflected the O-1E paygrade and confirmed “what [he] had been told while in the class, providing no prudent reason to investigate further into any possible inaccuracy in pay.”

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<sup>1</sup> The application was received by the Board on March 21, 2016.

The applicant stated that during his March 2013 drill weekend, he received a notice of the debt from the Personnel and Pay Center (PPC) dated February 27, 2013. He was advised that his "E" designation would be removed and the debt from the overpayment would be garnished from future pay. He appealed the decision and his appeal was denied. The applicant emphasized that at no time was he aware that he was not entitled to the "E" designator and associated pay increase. He cited BCMR Docket No. 2002-040 which he claimed had a "similar situation ... where a member was told that he was entitled to O-1E pay from the administrative staff at the Officer Candidate School (OCS), acting in good faith upon the guidance of a Yeoman who ... is reasonably expected to be knowledgeable about the administrative policies and was misled." The applicant argued that the member in this case was misled as the applicant was here. He therefore requested that he be repaid what has already been garnished and that all remaining debt be waived.

The applicant stated that he discovered the alleged error on March 10, 2013. In support of his application, he provided several documents, which are discussed in the Summary of the Record.

The applicant also provided a copy of BCMR Docket No. 2002-040. In that case, a Yeoman admitted in an email that he advised the applicant that upon graduation from OCS he would qualify for the "E" designator because he would have over four years of active duty at that time. Upon graduation, the applicant was commissioned with the O-1E designation. Shortly after graduation, the Coast Guard terminated the applicant's "E" designator because it was discovered that the applicant had been two days short of having over four years of active duty service to qualify. The Board was split two-to-one in favor of the applicant. The majority found that the applicant had proven by a preponderance of the evidence that an injustice existed because he had been erroneously counseled. The majority reasoned that if the applicant had been told he would not have met the requirements for the "E" designator, he would have waited another year to enter OCS because he showed sufficient evidence to prove that he asked many questions about this specific issue before entering the program. The Deputy General Counsel decided with the majority and in favor of the applicant. Relief was granted by giving the applicant two extra days of active duty at the end of OCS and changing his date of graduation by two days so that he was eligible for the O-1E designation.

### **SUMMARY OF THE RECORD**

On September 8, 2006, the applicant signed his Acceptance and Oath of Office to become an officer in the Reserve. The Oath of Office states that he was sworn in as an Ensign in paygrade O-1.

On February 27, 2013, PPC notified the applicant that he had been overpaid in the amount of \$3,843.08. He was informed that the overpayment would be garnished from his future pay. He was informed that he had the right to request a debt waiver and to inspect and copy relevant government records.

The applicant applied for debt waiver on March 10, 2013, the same day that he stated he received the letter from PPC. He made the same allegations as he made in his application to this Board (although he did not mention the BCMR decision in his PPC appeal). His command

endorsed the application and recommended approval of the waiver. His Commanding Officer stated that he “concur[red] with [the applicant’s] assessment of the situation.”

On March 29, 2013, the applicant received a response from PPC stating that his request for waiver was denied. The explanation states that he was overpaid from September 8, 2006, through February 28, 2012. When he graduated from ROCI he was “erroneously promoted ... to the rank of O1E when [he] should have been promoted to O1 without the prior enlisted “E” designator.” Because of this initial error the “E” designator had been applied to subsequent promotions up to the rank of O-E3.

PPC stated that they believed that “Basic Pay is a well known and a simple entitlement to determine by a reasonable person; regardless of erroneous counseling one might receive.” Military members are familiar with the Basic Pay Table which clearly states that to be eligible for the “E” designator a member must have over four years of active duty service or a Reservist must have 1,460 points as a warrant officer or enlisted member. PPC stated that the applicant knew he had neither four years of active duty or over 1,460 points when he was commissioned and he could have easily detected the error. Waiver was therefore determined to be inappropriate.

PSC provided a copy of the Military Basic Pay Chart. Rows labeled O-1E, O-2E, and O-3E are associated with footnote 3. Footnote 3 states “Applicable to O-1 to O-3 with at least 4 years & 1 day of active duty or more than 1460 points as a warrant and/or enlisted member.”

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

On April 24, 2018, the judge advocate general (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case. The JAG stated that the facts of BCMR Docket No. 2002-040 were “very different” from the applicant’s case. The applicant claimed that he was told during class that “prior enlisted members who had served more than four years would qualify for the ‘E’ designator as prior enlisted.” The JAG pointed out that the applicant did not provide any evidence to corroborate this claim and argued that it was just as likely that the instructors told the class that members who had served more than four years *of active duty* would qualify. In contrast, the applicant in BCMR Docket No. 2002-040 “relied on the advice given to him by his unit’s yeoman in deciding which [OCS] class to access into in order to be able to qualify for the O-1E status.” The Yeoman had miscalculated the applicant’s time, which rendered him short of the four year requirement by just two days. The JAG stated that the applicant in this case, however, did not join the program based on erroneous advice and “he had roughly 700 out of the 1460 points needed to qualify as O-1E.” The JAG argued that the applicant should have known the distinction between serving four years on active duty and in the Reserve. In recommending denial, the JAG also adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC stated that the application is timely and therefore should be considered on the merits. PSC argued that the applicant did not show that an error or injustice occurred in the “recoupment of overpayment.” The applicant’s Oath of Office shows that he was sworn in as an O-1. He was not eligible for the “E” designator when he was sworn in because he had not completed four years of active duty service or have the requisite Reserve points. PSC argued that it was “reasonable to

assume the entire class was told if [members had] 4 years of active duty service [they] would be entitled to the “E” designator but it is also reasonable to assume the applicant would have verified this information and noticed the caveat of the 1460 points for Reserve members.” PSC acknowledged that the Coast Guard erred by overpaying the applicant as an O-1E, however he was not entitled to the money and he “therefore should have to repay it as it was an overpayment and the applicant was not entitled to it.”

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

On May 25, 2018, the Chair sent the applicant a copy of the Coast Guard’s views and invited him to respond within 30 days. No response was received.

### **APPLICABLE LAW AND POLICY**

Title 37 U.S.C. § 101(20) states that “[t]he term ‘active service’ means service on active duty.”

Title 37 U.S.C. § 203(d) states the following:

(1) The basic pay of a commissioned officer who is in pay grade O-1, O-2, or O-3 and who is credited with a total of over four years’ service described in paragraph (2) shall be computed in the same manner as the basic pay of a commissioned officer in the same pay grade who has been credited with over four years’ active service as an enlisted member.

(2) Service to be taken into account for purposes of computing basic pay under paragraph (1) is as follows:

(A) Active service as a warrant officer or as a warrant officer and an enlisted member.

(B) Service as a warrant officer, as an enlisted member, or as a warrant officer and an enlisted member, for which at least 1,460 points have been credited to the officer for the purposes of section 12732(a)(2) of title 10.

Article 2.A.1.j. of the Pay Manual in effect in 2006, COMDTINST M7220.29A, states the following:

Pay Grades O1E, O2E and O3E. A commissioned officer in pay grade O1, O2, or O3, is entitled to the special rate of pay for O1E, O2E, or O3E, if the officer has had over 4 years of active service as a warrant officer or an enlisted member (combination of the two may be used after 30 Sep 83). In computing active enlisted service, include active duty for training (ADT) as an enlisted member (38 Comp Gen 68). Do not count active service in a dual status (temporary officer - permanent enlisted) (38 Comp Gen 68). Effective 1 Dec 2001, the special rate of pay for O1E, O2E, or O3E, is payable to a commissioned officer who earned 1,460 retirement points while in an enlisted or warrant officer status.

### **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.

2. An application to the Board must be filed within three years after the applicant discovers, or reasonably should have discovered, the alleged error or injustice.<sup>2</sup> The letter informing the applicant he had been overpaid was dated February 27, 2013, although he claimed he received it on March 10, 2013. The applicant's debt waiver application is dated the same day he stated that he received the notification, March 10, 2013. The waiver denial letter is dated March 29, 2013. The Board finds that this is the date from which to measure the timeliness of this application because it is the date he had exhausted his administrative remedies.<sup>3</sup> As noted above, the application was not docketed until November 29, 2017; however, the Board received the application package on March 21, 2016. March 21, 2016, is within three years of March 29, 2013, and the application is therefore timely.

3. The applicant alleged that the recoupment of his overpayment due to receiving the "E" designation on his paygrade is erroneous and unjust. 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 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>4</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>5</sup>

4. The applicant asked that the Coast Guard repay him what has already been recouped from his pay and waive any remaining debt. The record shows that the applicant accepted an appointment as an O-1 Ensign but was paid in paygrade O-1E for several years. Immediately upon receiving notice of the over-payment, the applicant applied to PPC and requested a debt waiver. PPC denied the request, stating that "Basic Pay is a well known and a simple entitlement to determine by a reasonable person; regardless of erroneous counseling one might receive." The Coast Guard recommended that the applicant's request be denied because he should have known that he was not entitled to the "E" designation as he had neither four years of active service nor 1,460 Reserve points. The Board agrees. The applicant claimed that he had been erroneously counseled while at ROCI but provided no evidence of such erroneous counseling. The Board must presume that the Coast Guard personnel who advised him did so correctly without evidence to the contrary.<sup>6</sup>

5. The applicant also relied upon the Board's decision in BCMR Docket No. 2002-040. The Board finds that the decision in that case does not warrant granting relief in this case because the facts of the two cases are very different. As the JAG noted, in BCMR Docket No. 2002-040, the applicant proved that before entering OCS, he had asked specific questions regarding the "E" designation. He made the decision to attend OCS at the time he did based on the erroneous advice of a Yeoman, and he had evidence to prove the bad advice. Had he known that he was two days shy of qualifying for the O-1E paygrade, he could have waited to attend OCS. The applicant here has no evidence to corroborate his claim that he was erroneously advised of the

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<sup>2</sup> 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

<sup>3</sup> 33 C.F.R. § 52.13(b).

<sup>4</sup> 33 C.F.R. § 52.24(b).

<sup>5</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).

<sup>6</sup> *Id.*

requirements for the O1-E paygrade, much less that he was individually miscounseled about his personal qualification. He did not claim that he inquired into his qualification for the “E” designator before entering the ROCI program, and he was not just a little shy of qualifying for the designation. According to the JAG, he had fewer than half of the Reserve points needed to qualify for the O-1E paygrade. Therefore, the Board finds that the decision in BCMR Docket No. 2002-040 has no bearing on the outcome of this case.

6. The applicant has not proven by a preponderance of the evidence that the Coast Guard’s recoupment of the overpayment from his pay is erroneous or unjust. Accordingly, the applicant’s request should be denied.

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

**ORDER**

The application of LT [REDACTED], USCGR, for correction of his military record is denied.

September 28, 2018

