

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2002-123

XXXXXX, XXXXXX X.
XXX XX XXXX, XXX

FINAL DECISION

GARMON, Attorney-Advisor:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on June 20, 2002, upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated May 29, 2003, is signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant asked the Board to recalculate his position on the 19xx Servicewide Examination (SWE) promotion list and to advance him to xxxxxx xxxxxx (XXX), pay grade E-7, effective October 1, 19xx, by adjusting his date of rank.

APPLICANT'S ALLEGATIONS

The applicant alleged that, at the time he passed the May 19xx SWE for promotion to XXX, his active duty base date was incorrect due to "an incomplete [or] incorrect Statement of Creditable Service [SOCS]." He alleged that as a result of this error, his final standing on the promotion list put him at number xx. He stated that advancements to XXX from the promotion list were made to number xx.

The applicant alleged that based on a review of his record, on May 17, 20xx, Coast Guard Human Resources Services and Information Center (HRSIC) adjusted his active duty base date from February 18, 198x to October 4, 198x. He alleged that had his active duty base date been correct at the time of the May 19xx SWE, he would have been

advanced from the promotion list in 19xx. In support of his allegations, he submitted a copy of his adjusted SOCS, dated May 17, 20xx. He also submitted copies of the enlisted personnel advancement announcements for September through December of 19xx, showing number xx as the last number to be advanced to XXX before the list expired on December 31, 19xx.

SUMMARY OF THE APPLICANT'S RECORD

On February 16, 198x, the applicant enlisted in the Coast Guard. On February 12, 198x, prior to his enlistment date, the Coast Guard sent an expedited Request for Statement of Service form to the United States Air Force Reserve to verify all dates of the applicant's active duty training. The form was later returned, indicating 1 year, 10 months, and 17 days of inactive service and no active service.

On March 12, 198x, the Coast Guard forwarded an expedited Request for Statement of Service form to the United States Army and the United States Army Reserve to verify all dates of the applicant's service. Subsequently, the form was returned with a Statement of Service indicating that the applicant had served 2 years, 11 months, and 28 days on active duty, and 9 months and 26 days on inactive duty.

On March 3, 19xx, a SOCS Worksheet was entered in the applicant's record. The form documents his above noted active duty service with the United States Army, and inactive duty service with the United States Army Reserve and United States Air Force Reserve. Moreover, the worksheet also indicates the applicant's then active duty service with the Coast Guard and that his active duty base date was established as February 18, 198x.

On July 1, 19xx, the applicant was advanced to xxxxxx xxxxxx (XXX). Throughout the applicant's record are several positive page 7s, commendations, and letters of appreciation documenting his meritorious service.

On May 7, 19xx, the applicant took the SWE for promotion to XXX. The results of the 19xx SWE indicated that the applicant had qualified for promotion and was ranked at number xx for advancement during the January 1, 19xx through December 31, 19xx effective period of the promotion list. During the last quarter of 19xx, numbers xx through xx on the 19xx SWE XXX eligibility list were advanced. The promotion list expired on December 31, 19xx, without the applicant, number xx, being advanced.

In May 19xx, the applicant again took the SWE for promotion to XXX. He qualified for promotion and was advanced to XXX on November 1, 19xx.

By memorandum dated July 24, 20xx to Coast Guard HRSIC, the applicant requested an adjustment to his active duty base date, based on previously un-credited active duty served in the United States Air Force Reserve.

On May 17, 20xx, HRSIC informed the applicant that an adjustment was made to his active duty base date. After an additional total of 4 months and 15 days of active duty service were added to his creditable service, the applicant was issued a new SOCS, reflecting an adjustment in his active duty base date from February 18, 198x to October 4, 198x.

VIEWS OF THE COAST GUARD

On November 27, 2002, the Chief Counsel of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request.

The Chief Counsel admitted that the applicant's active duty base date was incorrect at the time the applicant took the 19xx SWE. However, he argued that the applicant had extensive notice and opportunity to correct the error. He argued that beginning as early as 198x, the applicant had notice that his active duty base date (ADBD) was established as February 18, 198x, as that date was indicated on each and every monthly Leave and Earnings Statement (LES) the applicant received. He asserted that "[the applicant] had the ability and responsibility to correct this error before the May 19xx SWE."

The Chief Counsel argued that the error was not caused by Coast Guard action. He alleged that at the time the applicant enlisted, his recruiter submitted the appropriate documents requesting information to verify his prior service. He argued that in accordance with the requests, timely adjustments were made to the applicant's ADBD, as that information was received from the other branches of service. He argued that in forwarding the applicant's active duty service information, the Air Force failed to inform the Coast Guard of the applicant's active duty in the Air Force Reserve. Consequently, he argued, there is no evidence in the record that the Coast Guard had any prior knowledge of the applicant's active duty service in the Air Force Reserve until the applicant's letter to HRSIC in July 20xx.

The Chief Counsel argued that members are given thorough guidance about the advancement process and are informed that they are ultimately responsible for ensuring the accuracy of the information on which their final multiple is based. He asserted that the January 19xx announcement of the 19xx SWE informed members of their responsibility to verify, correct, and sign their personal data extract (PDE), which

includes the member's ADBD, by March 27, 19xx. He argued that by signing the PDE, the applicant acknowledged and indicated that all his PDE information was correct. In fact, he argued, according to SWE files maintained by HRSIC, the applicant has been validating as correct each PDE he received back to 19xx.

The Chief Counsel argued that each time the applicant competed in the SWE, he was provided an opportunity to note any errors in his PDE and request corrective action. He argued that although the applicant revealed in his July 24, 20xx request to HRSIC that he knew of the error but could not prove it, there is no evidence in the record which indicates that the applicant attempted to correct his ADBD prior to that time. He argued that excusing the applicant of the requirement to verify the accuracy of his PDE or take corrective action until 20xx "would severely impact the Coast Guard's enlisted advancement process and other workforce management processes."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 2, 2002, the Chair sent a copy of the views of the Coast Guard to the applicant and invited him to respond within 15 days. He responded on December 18, 2002.

The applicant alleged that the advisory opinion is based on the assertions that (a) he is unable to show Coast Guard error, and (b) had he timely verified his PDE, he would have been promoted in 19xx. He argued that, contrary to the Chief Counsel's view, he does not allege that the Coast Guard committed an error but that the mistake was committed by the Air Force in failing to credit him with all of his active duty service. The applicant argued that although the Air Force caused the error, his military records nonetheless require correction, as he has suffered a one-year loss of seniority as a result. The applicant asserted that the Coast Guard's recommendation to deny him relief because the Air Force, and not the Coast Guard, committed the mistake "seems unjust and arbitrary."

The applicant argued that even after he had sufficient proof that additional periods of active service were not credited to his Air Force Reserve service, he still encountered problems in obtaining a corrected SOCS from the Air Force. He alleged that despite the second request from HRSIC for his Air Force SOCS, a petty officer was required to personally call the Air Force records center in order to receive the necessary information. He argued that because it took nearly ten months for the Air Force to provide the Coast Guard with the corrected information, the three-month period between verifying his PDE and taking the SWE would have been an insufficient amount of time to have his ADBD corrected. He further contended that even if an "interim adjustment" could have been made to his ADBD, before the Coast Guard received corrected information from the Air Force, he was unwilling to risk subsequent

demotion and recoupment of pay and allowances, had the Air Force forwarded his SOCS without correction.

The applicant asserted that the PDE verification process was not designed to handle the circumstances of his “fairly unique problem.” He argued that contrary to Coast Guard’s opinion, the potential damage to the promotion system in advancing him effective October 1, 19xx is not likely to be great as the problem he experienced is rare.

The applicant stated that he is aware of the responsibility placed on members to review their PDE information for purposes of promotion and knowledgeable of the issues that can arise when a member neglects to properly review their information. However, he argued, although he believed he should have been credited with more active duty service, he assumed that he was unable to have his information changed without the evidence to prove such. He alleged that once he had documentation to prove his additional service, he immediately sought corrective action. He argued that the Coast Guard’s assertion that a PDE, once signed, can never be adjusted is “needlessly arbitrary” and reiterated that he is entitled to relief.

APPLICABLE LAW

Personnel Manual (COMDTINST M1000.6A)

Article 5.C.4.a. of the Personnel Manual provides that “[i]t is each individual’s responsibility to ensure their eligibility in all respects for the SWE. The key to doing so is by verifying and signing the Personnel Data Extract, [PDE] ..., received prior to the SWE date. By signing the [PDE] ..., members state all changes noted or information on the form are current and correct and no further corrections are necessary. ...”

Article 5.C.4.f. provides that “[t]he Commanding Officer, [of HRSIC] is the single point of contact for all SWE inquiries, corrections, and waivers; and is responsible for the preparation, printing, distribution, accountability, and scoring of the [SWE].”

Article 5.D.1.a. states that the PDE is the tool used by the command and the member to verify the information for correctly computing the SWE Final Multiple. Article 5.D.1.c. provides that among the information contained in a member’s PDE is identifying information, award points, active duty base date, date of rank, creditable awards/points/date, and a signature block. With respect to the signature block, the Article 5.D.1.c.21. states that “[b]y signing, the member acknowledges the PDE is correct, ..., and requires no further changes. If changes are required, the member must address them prior to signing.”

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.

2. The applicant alleged that had his ADBD been correct at the time he took the 19xx SWE, he would have been advanced from the 19xx promotion list to XXX. The record indicates that the additional periods of active duty added to his record in 20xx would likely have placed the applicant at number xx on the promotion list, with a corresponding promotion in 19xx.

3. The record shows that the Air Force Reserve, in responding to the Coast Guard's Request for Statement of Service, failed to credit the applicant with any active duty service. The record further shows that, prior to taking the 19xx SWE (and previous SWEs as well), the applicant signed his PDE, despite apparently "believ[ing] that he] had more [active service] time than [he] was being credited with." Notwithstanding the error of the Air Force Reserve, however, the inaccuracy of the applicant's final multiple for the 19xx SWE must be attributed to the applicant himself. According to the Personnel Manual, members are charged with the responsibility to "ensure their eligibility in all respects for the SWE ... by verifying and signing the [PDE]" Personnel Manual, Article 5.C.4.a. Even if the applicant could not prove the error, he evidently was aware that changes needed to be made to his PDE and was required under applicable regulations to "address [the changes] prior to signing [his PDE]." See Article 5.D.1.c.21. of the Personnel Manual. Because the applicant has not established by a preponderance of the evidence that he fulfilled his responsibilities with respect to noting necessary adjustments to his PDE, prior to signing it in acknowledgment of its accuracy, he should not now complain about the adverse consequences of his own inaction.

4. The applicant alleged that the three-month period between verifying his PDE and taking the 19xx SWE was an insufficient amount of time to obtain an adjustment to his ADBD. However, the Board is not persuaded that the applicant had only the three months available in 19xx to obtain an ADBD adjustment for time owed from 198x and 198x. Although, the applicant asserted that upon locating the executed active duty orders, he "immediately went through the appropriate channels to get the situation resolved," nothing in the record establishes that he only recently discovered that he was owed additional credit for periods of active service. In fact, in his letter of July 24, 20xx to HRSIC, he stated that "[u]ntil [he] found the orders ... [he] had assumed [he] would be unable to get [the error] rectified." Despite the fact that it took approximately eleven months from the date of his request for an adjustment to his

ADBD to the date he received a corrected SOCS, the Board finds that the applicant had ample time – long before taking the 19xx SWE – to take action on correcting his PDE.

5. The Coast Guard followed established policy and procedure when it requested the applicant's prior active service information from other military branches. Moreover, the Coast Guard timely corrected the error in the applicant's ADBD when it was verified by the Air Force Reserve. The applicant contends that because his ADBD has been adjusted, his date of rank to XXX should be back dated. However, part of the purpose of verifying one's PDE is to bring errors to the attention of the Commanding Officer of HRSIC so that corrections can be made. *See* Article 5.C.4.f. of the Personnel Manual. The record indicates that the applicant made no effort, prior to July 24, 20xx, to notify the Coast Guard of his erroneous ADBD. The Board finds nothing in the applicant's record to prove that the Coast Guard erred by not promoting him in 19xx. The applicant has therefore failed to prove by a preponderance of the evidence that he is entitled to relief.

6. Accordingly, the applicant's request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of XXX XXXXXX X. XXXXXX, XXX XX XXXX, USCG, for the correction of his military record is denied.

Julia Andrews

Christopher A. Cook

Patrick Judd Murray