

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2003-049

XXXXX, XXXXX X.
xxx xx xxxx, XXXX

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 March 7, 2003 upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated December 18, 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 that the Board to correct his final point multiples for the 19xx and 19xx Servicewide Examinations (SWEs) and to advance him to xxxxx from the 19xx promotion list.

APPLICANT'S ALLEGATIONS AND SUBMISSIONS

The applicant stated that he competed for promotion to HSC during the 19xx and 19xx SWEs. He alleged that in May 19xx, he was awarded a Coast Guard Achievement Medal that was not entered into his personnel file prior to taking the examinations. He alleged that as a result of this error, his standing on both advancements lists was miscalculated by two points and he was not promoted. He alleged that had he been given timely credit for the award, "his position on the advancement list would have been much higher" and he would have been advanced to pay grade E-7 "if not from the 19xx list, most assuredly from the 19xx list."

The applicant asserted that there was "some confusion" about his Achievement Medal. He alleged that because he was being recognized for his service while assigned to a detached billet, "at least 4 units were involved with administration, personnel, and pay record support [with respect to his personnel files]." He alleged that the award should have been entered by the unit which prepared it. However, he stated, in many instances, service and record entries were recorded by the four different units, "with no single office, unit, or individual point of contact." The applicant asserted that until he reviewed his profile letter in July 19xx (for the advancement exam he had taken in May 19xx), he inadvertently overlooked the failure to include the award in his record.

The applicant asserted that when he discovered the error in his points, he asked to have the problem corrected but had no success. He stated that his unit personnel office told him that because he signed his personnel data extract (PDE), he confirmed by his signature that the information contained therein was correct. The applicant acknowledged the fact that he had missed the opportunity to correct the administrative error at the time he signed the PDE but argued that he should "simply receive the credit for the award earned ... when it should have been credited" and should not be penalized for not "catching an administrative error."

The applicant asserted that he did not discover the error until after the June 1, 19xx cutoff date to submit corrections to PDEs. He alleged that for months thereafter, he was given inaccurate information and improper guidance from his personnel office and chain of command regarding how the error could be corrected. He stated that in July 19xx, he had his PDE corrected to show the award and proper credit for purposes of future examinations. He alleged that during the following month, while the advancement list was still active, his new supervisor contacted a master chief petty officer (MCPO) on his behalf at the Coast Guard Human Resources and Information Center (HRSIC) to determine whether a correction could be made.

According to the applicant, the MCPO indicated that it was too late to make the correction but had the matter been brought to his attention earlier, he would have "felt inclined" to add the points. The MCPO also indicated, the applicant alleged, that it would not be fair to everyone else if the correction was made in August 19xx. However, the applicant argued, "no member from that current list would have been denied advancement by my being placed in the proper position on the list." In closing, the applicant asserted that although he was proud to have his service acknowledged by this award, "the fact that it was not considered during the window of opportunity which would have significantly impacted [his] career taints the award itself and leaves [him] feeling that the support [he] received is not equal to the service [he] provided as a member of the Coast Guard."

In support of his application, he submitted a letter from his supervisor and copies of endorsements by his command, which strongly support his request; a copy of

the Commandant's denial of his request; and other documents related to his promotion points, including a copy of his award, his profile letters for 19xx and 19xx, and eligibility lists for 19xx and 19xx.

Summary of Applicant's Relevant Evidence

Supervisor's Letter

On February 26, 19xx, the supervisor wrote that in July 19xx, he became aware of the error in the applicant's award points and of the fact that the applicant had attempted to obtain a correction for more than a year. He stated that the applicant had spoken with a senior chief yeoman who verified that the deadline for correcting errors to the PDE had, indeed, expired. He stated that he called a MCPO about the matter and was told that if the error had been brought to the MCPO's attention earlier, he would have been more inclined to add the two points to correct the applicant's record.

The supervisor stated that although the applicant obtained endorsements from his entire chain of command, his request was denied because the applicant "did not catch [the] mistake soon enough." He stated that the applicant was given poor advice and the manner in which the applicant was treated is not consistent with the Commandant's policy of "taking care of our people." He stated that the applicant earned the two points at issue long before the SWE list was published and that this error and injustice should have been corrected some time ago.

Applicant's Request for a Waiver

By memorandum, dated September 23, 19xx, the applicant submitted a request to CGPC that he be granted a waiver to allow his PDE for the May 19xx SWE to reflect two additional points for the award he received on May 20, 19xx. He stated that because he signed the PDE form verifying that the information was correct, he was told by members of his chain of command that nothing could be done to correct the error.

The applicant also stated that he discussed the matter with his immediate supervisor, who contacted an MCPO at HRSIC. He stated that he had tried to resolve the matter long before August 19xx but believed that he was not given the best advice. He stated that had his unit and supervisors sought advice from those outside the XXX, he believes that the error could have been resolved earlier. He stated that he agreed with the Commandant's Direction 19xx message, wherein it was stated that the Coast Guard is committed to its members and the members are committed to the Coast Guard.

First Endorsement on the Applicant's Request

On September 26, 19xx, the applicant's division chief wrote that he strongly recommended approval of the applicant's waiver request. He stated that the applicant is an outstanding performer and that his service to the fleet was remarkable. He noted that the applicant's attempts to resolve the matter locally were unsuccessful.

Second Endorsement on the Applicant's Request

On October 29, 19xx, the applicant's commanding officer (CO) wrote that he strongly urged an immediate correction of the applicant's award points to be made to the current xxx advancement list. He stated that his first class yeoman's response to the applicant's attempts to have the error corrected was "entirely unsatisfactory." He also stated the following:

[Article 5.D.1. of the Personnel Manual] in no way prohibits the proper crediting of [the applicant's] award and the subsequent revision of the advancement eligibility list contained in [the Commander of the Coast Guard Personnel Command's letter of July 14, 19xx]. [The applicant] is directly on target when he refers to the Commandant's own stated commitment to an emphasis on Coast Guard people. ...

Other Relevant Evidence

The applicant submitted a copy of his 19xx SWE results notification from HRSIC. The final multiple points listed for "medals/awards" is 7.00 (instead of 9.00), and his standing on the advancement eligibility list is noted as xx. The applicant also submitted a copy of his 19xx SWE results notification from HRSIC. The final multiple points listed for "medals/awards" is still 7.00 and his standing on the advancement eligibility list is xx.

The applicant also submitted signed copies of his May 19xx and May 19xx PDEs. On both forms, the "creditable awards for servicewide only" sections list seven awards worth one point each. The May 19xx Coast Guard Achievement Medal is not listed on either of the PDEs.

SUMMARY OF THE APPLICANT'S RECORD

On July 25, 19xx, the applicant enlisted in the Coast Guard. On July 1, 1993, he was promoted to a xxxxxxxx.

On May 20, 19xx, the applicant was awarded a Coast Guard Achievement Medal, which for purposes of the SWE is worth two points in calculating final multiples. In June of 19xx, he was presented the Achievement Medal at a ceremony held by his command.

On December 8, 19xx, CGPC published a general message, announcing the eligibility requirements, deadlines, and responsibilities of members for the upcoming May 19xx SWE. The message stated that "... the importance of proper and timely verification of the personal data extract (PDE) cannot be overemphasized," and that "[i]t is the member's responsibility to ensure that all eligibility requirements to compete in the SWE are met."

On March 15, 19xx, the applicant signed his PDE for the May 19xx SWE, certifying that he had reviewed the PDE and listed all necessary changes. Although the applicant's Achievement Medal was not listed on the PDE, he requested no changes to the PDE.

By letter dated July 10, 19xx, the applicant was notified that he had passed the May 19xx SWE. He was provided his total final multiple for the examination and his standing of xx on the advancement eligibility list. The total points listed for the "medal/awards" category was 7, instead of 9.

On December 14, 19xx, CGPC published a general message, announcing the eligibility requirements, deadlines, and responsibilities of members for the upcoming May 19xx SWE. The message stated that "[i]t is the member's responsibility to ensure that all eligibility requirements to compete in the SWE are met ... and to ... ensure all corrective action has been completed by June 1, 19xx (no corrections will be authorized after this date)."

On March 6, 19xx, the applicant signed his PDE for the May 19xx SWE, certifying that he had reviewed the PDE and listed all necessary changes. Again, the applicant's Achievement Medal was not listed on the PDE, but he requested no changes to the PDE.

By letter dated July 14, 19xx, the applicant was notified that he had passed the May 19xx SWE. He was provided his total final multiple for the examination and his standing of xx on the advancement eligibility list. The total points for the "medal/awards" category was again listed as 7.

In July 19xx, the applicant's requested that his PDE be corrected to include his Coast Guard Achievement Award. However, because the deadline for correcting errors was June 1, 19xx, the change had no effect on his PDE for the May 19xx SWE.

On November 20, 19xx, CGPC published the names of eligible personnel from the May 19xx SWE to be advanced to pay grades E-7 through E-9, effective December 1, 19xx. Because advancements for HSC were made to number 16, the applicant, who was number xx on this list, was not advanced.

On August 1, 19xx, CGPC published a revised cutoff list for the May 19xx SWE for pay grades E-7 through E-9. It stated that “those not advanced, but at [or] above the cutoff at the end of the cycle, are carried over to the next SWE eligibility list.” The cutoff point listed on the HSC eligibility list was number xx. Because the applicant placed at number xx, he was below the cutoff.

On September 23, 19xx, the applicant requested that CGPC credit him with two additional award points in computing his total final multiple for the May 19xx SWE, and make a corresponding adjustment to his standing on the advancement list. In support of his request, the applicant submitted two endorsements from members of his chain of command, who strongly supported the applicant’s request.

By memorandum dated November 26, 19xx, CGPC denied the applicant’s request to be credited with the two additional award points. In supporting its reasons for the disapproval, CGPC stated the following:

2. As per [Article 5.D.1.c.21. of the Personnel Manual and the general message announcing the May 19xx SWE], you are responsible for verifying the accuracy of your Personal Data Extract (PDE) and to take action to make corrections if necessary. Based on our review of the case, it appears you took no action until the summer of 19xx. This is well after 1 June 19xx deadline established in [the above-noted general announcement].
3. In your request, you reference the Commandant’s Direction 19xx. We fully embrace his emphasis on people. However, we must establish individual accountability and deadlines to prevent confusion, uncertainty, and unpredictability in the advancement process. ...

On November 27, 19xx, the Commander of xxxxxxxx appealed CGPC’s denial on behalf of the applicant to the Commandant. He asserted that although the applicant did not notice the error before the June 1, 19xx deadline, he did notice and report the error in July 19xx—more than a year before the advancement list was to be published. He argued that “surely [that was] enough time to ensure the desired certainty and predictability in the advancement process described in [the denial letter from CGPC].” He stated that the applicant’s situation was “unique” in that “even with the award points credited, [for the 19xx SWE, the applicant would] not be above the cut for advancement off the next advancement list that will run through December 19xx. Therefore, he urged that the award points be credited when they were earned in 19xx, to enable the applicant to be advanced to HSC in December 19xx.

On February 4, 19xx, the Commandant concurred with the decision of CGPC. In denying the applicant’s request, the Commandant reasoned that because the applicant was a senior officer, who was familiar with the SWE process and had been awarded (in a personal ceremony) only one Achievement Medal, the absence of the award was readily apparent. The Commandant noted that the applicant also had the opportunity to correct his record one year earlier when he participated in the 19xx SWE. The

Commandant further stated that based on the applicant's case, and others like it, HRSIC, CGPC, and other appropriate Coast Guard offices "will look for enhancements to improve the advancement system." The Commandant stated that the PDE verification process was specifically designed to have both the command and the member review the PDE to guard against oversights and that "[t]he individual service member's scrutiny is an essential component to quality and accuracy."

To date, the applicant continues to serve in the Coast Guard as an XXX.

VIEWS OF THE COAST GUARD

On July 21, 2003, the Chief Counsel of the Coast Guard submitted an advisory opinion to which he attached a memorandum on the case prepared by CGPC. In adopting the analysis of CGPC, the Chief Counsel recommended that the Board deny the applicant's request for relief.

The Chief Counsel pointed out that the applicant's record reflects the Coast Guard Achievement Medal and therefore, has already been corrected. He argued that the applicant has failed to show how Coast Guard regulations, which hold him accountable for his own failure to ensure the accuracy of his record, are unjust. He asserted that the Coast Guard has "consistently applied a rational policy of setting a cut-off date after which it will not make corrections to a record that affect an individual's final multiple on an individual Service Wide Exam."

The Chief Counsel asserted that the Coast Guard does, in fact, consider waivers in situations where a member has reviewed their PDE, found errors and submitted the PDE for correction by the established deadline, but no action had been taken by the Coast Guard. However, he argued, because the applicant signed his PDE as correct and later discovered the error after the established deadline, the waiver policy is inapplicable to the applicant's case. He asserted that any information the applicant may have received to the contrary was provided under the assumption that he had not verified his PDE as being correct.

The Chief Counsel stated that prior to taking the SWE, 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 argued that there is nothing unfair about holding the applicant, who seeks advancement to the rank of chief petty officer, accountable for failing to correct "a glaring error" on his PDE when provided with two separate occasions to so do.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 28, 2003, the Chair sent a copy of the views of the Coast Guard to the applicant and invited him to respond within 30 days. On August 18, 2003, the applicant responded by stating that he generally disagreed with the advisory opinion.

The applicant asserted that he accepted responsibility for his actions. However, he argued that the MCPO indicated to his supervisor that exceptions to the stated regulations are routinely made and would have been made in his case if the MCPO had been contacted earlier. He argued that he initiated his request for an exception because, contrary to the MCPO's comment, he had pursued a correction many months earlier but was given erroneous advice.

The applicant pointed out that he received positive endorsements on his request from his entire local chain of command and noted that his CO went on to state that "his own staff ... acted unsatisfactorily when [the applicant] tried to correct [his] record over 2 years ago." He concluded his response by reiterating his request for 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, ..., 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.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.b. of the Personnel Manual deals with collecting Personnel Data Extract (PDE) information. It provides the following:

Commanding Officer, Human Resources Service and Information Center (HRSIC/adv) collects the PDE information from the members' PMIS data. A crucial part of accurate data collection is timely submission of PMIS transactions. Members, commands, and PERSRUs [personnel reporting units] should ensure the necessary PMIS transactions are submitted promptly by the specified deadlines.

Article 5.D.1.c. provides that among the information contained in a member's PDE is identifying information, award points, date of rank, creditable awards/points/date, and a signature block. With respect to the signature block, 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."

Medals and Awards Manual (COMDTINST M1650.25B)

Article 1.A.12.g. of the Coast Guard Medal and Awards Manual (MAM) addresses the procedures for processing point credits for enlisted awards with respect to the SWE competition. It states that “[i]t is the responsibility of each awarding authority to notify their servicing PERSRU of each award approved for enlisted personnel. This action is required *immediately* to substantiate point credit toward Servicewide examination competition,”(Emphasis in original.)

Article 1.A.19.c. provides that PERSRUs “must submit PMIS/JUMPS [personnel management database] transactions to record any award earned by Coast Guard ... members.” Article 1.A.19.e. provides that the member is ultimately “responsible for ensuring the accuracy of PMIS/JUMPS award data.”

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 two points been properly credited to his record when they were earned in May 19xx, he would have been advanced to XXX from either the 19xx or the 19xx XXX advancement list. 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]” See Article 5.C.4.a. of the Personnel Manual.
3. The record indicates that the applicant’s servicing PERSRU failed to timely enter his award points into the PMIS/JUMPS in accordance with Articles 1.A.12.g. and 1.A.19.c. of the MAM. As a result of this delay, the Coast Guard erred by failing to process the applicant’s award points to allow their inclusion in his PDEs. The Personnel Manual states that the PDE is a verification tool to be used by both “the command and the member” (Emphasis added.) As acknowledged by the Commandant in his February 4, 19xx dated memorandum, the Board agrees that there is a need to “look for enhancements to improve the advancement system,” especially with respect to the command’s responsibility for ensuring the accuracy of the member’s records.

4. However, the record also indicates that prior to taking the SWE in 19xx and in 19xx, the applicant had multiple opportunities to have his PDE corrected. Notwithstanding the Coast Guard's error, the applicant is ultimately responsible for ensuring the accuracy of his award data and his eligibility for the SWE. *See* Article 5.C.4.a. of the Personnel Manual and Article 1.A.19.e. of the MAM. Furthermore, the positive endorsements received by the applicant from his command in support of his request fail to relieve him of his responsibilities with respect to making corrections to his PDE, prior to signing it in acknowledgement of its accuracy. Insofar as a member is best situated to discover errors in and verify the accuracy and completeness of his or her own record, the length of time that the error remained in the applicant's record must largely be attributed to his own oversight.

5. Moreover, the Board notes that in July 19xx, when the applicant brought the error in his award points to his unit's attention, the Coast Guard promptly corrected the error. The applicant has failed to cite any statute or regulation that permits the error to be retroactively corrected.

6. The applicant alleged that even though he reported the error in July 19xx, after the June 1, 19xx deadline for correcting PDEs, it was unjust for the Coast Guard not to correct the advancement list to reflect the two points for his Achievement Medal. The applicant has not persuaded the Board that, under the circumstances of this case, the Coast Guard's failure to waive the deadline for him constitutes an injustice. The applicant has therefore failed to prove by a preponderance of the evidence that he is entitled to relief.

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

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of XXX XXXXX X. XXXXX, xxx xx xxxx, USCG, for the correction of his military record is hereby denied.

Julia Andrews

George J. Jordan

Kathryn Sinniger