

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2004-194**

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**FINAL DECISION**

**Author: Ulmer, D.**

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 application was docketed on September 27, 2004, upon receipt of the applicant's completed application and military records.

This final decision, dated June 9, 2005, is 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 asked the Board to correct his military record by adjusting his promotions to reflect his prior military active duty service. He alleged that the Coast Guard incorrectly computed his prior military service time "to the detriment of my promotions, pay raises, and bonuses." He claimed that his advancement to pay grade E-4 upon his graduation from "A" school should have been October 1, 1977, rather than November 1, 1977; his advancement to E-5 should have been June 1, 1978, rather than July 1, 1978; and his advancement to E-6 should have been June 1, 1980, rather than July 1, 1980.<sup>1</sup>

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<sup>1</sup> The applicant also requested that the Board reconsider its decision in BCMR No. 50-94 denying his request for a Zone B selective reenlistment bonus (SRB). The Board denied the applicant's request in that case because at the time the extension of enlistment for which he hoped to receive an SRB would have become operative, the applicant had more than the 10 years and was therefore ineligible for the SRB. In reaching the decision to deny the applicant's request in BCMR No. 50-94, the Board took into consideration the two-month period of active duty for training that the applicant performed in 1976. Accordingly, even if the applicant had not been properly credited with prior service with respect to his

The applicant submitted a statement of creditable service from the Coast Guard Personnel Service Center dated June 11, 2004, showing his pay base date to be May 14, 1976 and his active duty base date to be April 18, 1977. The statement credits the applicant with the two months of recruit training as a member of the Reserve from June 28, 1976 to August 27, 1976. The cover letter accompanying the statement of creditable service stated that no discrepancies were found in the member's pay base date, active duty base date, or career sea time or pay.

### **SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard Reserve on May 14, 1976 for a period of six years. He began recruit training on June 28, 1976 and was released from active duty on August 27, 1976. Subsequently, he enlisted in the regular Coast Guard as a seaman [SN; pay grade E-3] on June 18, 1977 and enrolled in MK "A" School on June 19, 1977. The achievement sheet in the applicant's enlisted record shows that he graduated from "A" school on October 7, 1977 at the rank of FNMK (pay grade E-3) and was advanced to MK3 (pay grade E-4) on November 1, 1977.

As an enlisted member, the applicant was advanced several times, eventually reaching the rank of MKC (pay grade E-7) on January 1, 1988. While serving as an MKC, he was selected for an appointment to warrant officer. On December 1, 1991, he was appointed to the grade of warrant officer - W1. The applicant continues to serve in the Coast Guard and has been promoted to the rank of CWO4 (chief warrant officer - W4).

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

On February 15, 2005, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request. The JAG stated that the applicant does not explain when his prior military service began and ended or how the alleged failure to credit him with any prior military service entitled him to promotions, pay raises, and bonuses. He further stated that the applicant has been appropriately credited with his prior military service.

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advancements, it would not make a difference with respect to the outcome of the decision in BCMR No. 50-94. The Chair advised the applicant on September 24, 2004, that the Board would not reconsider its decision in BCMR 50-94, because he offered no evidence that could cause a different outcome in that case, as required by 33 CFR § 52.67. The applicant was also advised that the Board would consider that portion of his application requesting correction to the dates of his advancements and promotions, with back pay and allowances as a new case.

The JAG argued that "absent strong evidence to the contrary, government officials are presumed to have carried out their duties correctly, lawfully, and in good faith," citing *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992), and *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979). He argued that the applicant never identifies the period of prior military service he is complaining about or how that period negatively affected his promotions, pay raises, and bonuses. The JAG stated that the June 11, 2004, audit by the Coast Guard Personnel Service Center found "no discrepancies in member's pay base date, active duty base date, or career sea pay/time." The JAG stated that the record supports a finding that the applicant has already been credited for all of his prior military service.

The JAG attached comments from the Commander, Coast Guard Personnel Command (CGPC) as Enclosure (1) to the advisory opinion. CGPC stated the following:

The applicant has provided no evidence to support his allegation that at the time of his advancement to MK3 (E-4) the Coast Guard erred by not crediting him with the proper active duty time. The applicant completed MK "A" School on October 7, 1976 . . . The applicant reported to his first unit on Friday, October 28, 1977. On Tuesday, November 01, 1977, the applicant was promptly advanced to MK3 (E-4).

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

On February 16, 2005, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond. The BCMR did not receive a response to the advisory opinion.

#### **APPLICABLE LAW**

##### ***Personnel Manual (COMDTINST M1000.6A)***

Article 5-C-26(a)(1) of the Personnel Manual in effect at the time the applicant was advanced to pay grade E-4 in 1977 stated that the Commandant authorized advancements to grades E-4 through E-9 from eligibility lists established as a result of service wide competition.

Article 5-C-26(a)(2) of the Personnel Manual provided that district commanders and commanding officers were authorized to advance from pay grade E-3 to E-4 without regard to vacancies, members who graduated from Class "A" schools during the current enlistment and who met the other applicable requirements for advancement in rate under Article 5-C-3.

## 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 submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of the United States Code. The application was timely under *Detweiler v. Pena*, 38 F.3d 591, 598 (D.C. Cir. 1994) (holding that section 205 of the Soldiers' and Sailors' Civil Relief Act of 1940 "tolls the BCMR's limitations period during a servicemember's period of active duty").

2. The evidence submitted by the applicant shows that he has been credited with the two months of active duty that he earned prior to joining the regular Coast Guard in 1977. His pay base date is calculated from May 14, 1976, the date he enlisted in the Coast Guard Reserve. During the approximately one year he spent in the Reserve, he performed two months of active duty from June 28, 1976 until August 28, 1976. The two months of active duty were included in the calculation of the applicant's active duty base date when he enlisted in the regular Coast Guard on June 18, 1977. Taking the two months of active duty into consideration, the Coast Guard adjusted the applicant's active duty base date retroactive to April 18, 1977.

3. The applicant complained that he was not credited with his prior active duty when the Coast Guard determined his advancements and promotions and pay. However, the applicant never explained how the prior service would have caused him to have different advancement dates than those documented in his record. Until December 1991, the applicant was an enlisted member. Advancement in rate for enlisted members to pay grades E-4 through E-9 are not determined by the date of enlistment or by how long one has been on active duty, but by the inclusion of a member's name on an authorized advancement list after taking a servicewide examination, except that "A" school graduates may be advanced upon graduation and meeting the other eligibility requirements contained in the Personnel Manual without taking the SWE and without regard to vacancies. The applicant graduated from "A" school on October 7, 1977, and was advanced to MK3 on November 1, 1977. He has not presented any evidence that he should have been advanced earlier, except to argue that he was not credited with prior military service. As stated above, prior military service or current service for that matter is not determinative of advancement.

4. Nothing in the applicant's military record or his submissions establishes that he has any prior active duty except for the two months that has been credited to him.

5. Accordingly, the applicant has failed to prove an error or injustice, and his request should be denied.

**[ORDER AND SIGNATURES ON FOLLOWING PAGE]**

**ORDER**

The application of \_\_\_\_\_, for correction of his military record is denied.

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James E. McLeod

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J. Carter Robertson

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Darren S. Wall