

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2012-029

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

This is a proceeding under 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 November 29, 2011, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated August 3, 2012, 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 senior chief xxxxxxxxx (XXCS/E-8) in the Coast Guard Selected Reserve (SELRES), asked the Board to correct her record by advancing her to master chief xxxxxxxxx (XXCM/E-9) as of December 1, 20xx, and to award her the back pay and allowances that would be due as a result of that advancement.¹

The applicant alleged that in 20xx, there were four authorized Reserve XXCM billets, and only two of the billets were filled. In support of this allegation, the applicant submitted the October 31, 20xx, “Reserve (SELRES) Manpower Report - Positions,” showing a total of four authorized XXCM billets in the SELRES; and the October 31, 20xx, “Reserve (SELRES) Manpower Report – Strength by Paygrade,” showing that only two of the four authorized XXCM billets were filled.² The applicant noted that at the time, there were actually seven reservists who were XXCMs, but five of them did not count against the Reserve component end strength because

¹ The applicant actually stated, “I should have been advanced to XXCM during FY 20xx. I request advancement on 1 Dec 20xx with appropriate adjustments to pay.” December 1, 20xx, is in fiscal year (FY) 20xx, rather than FY 20xx, but Coast Guard advancements lists are normally effective for periods of calendar years, rather than fiscal years, so the Board presumes the applicant meant calendar year (CY) 20xx rather than fiscal year (FY).

² The SELRES Manpower Reports also show that although there were 92 master chief positions authorized, including 27 non-rate-specific positions, and 91 master chiefs filling those positions, four ratings, including DC, FS, IV, and YN, had fewer master chiefs than authorized positions.

- two had been serving on active duty for a few years and, under Chapter 1.C.2.b.(1) of the Reserve Policy Manual, reservists serving on active duty for more than 180 are counted in the active duty component end strength, rather than the Reserve component;
- three (including one of those on active duty) had more than 30 years of service; and
- one was over 60 years old and on the inactive status list.

Therefore, the applicant concluded, because there were two vacant XXCM billets in the SELRES, and eligible reservists are supposed to be advanced to fill vacancies, she should have been advanced.³

The applicant alleged that at the time she contacted the following persons and offices about her entitlement to advancement to no avail: her unit's Reserve Command Master Chief, Senior Reserve Officer, the District's Reserve Command Master Chief, the Reserve Enlisted Assignment Officer, the XXXXXXXX Rating Force Master Chief, the Master Chief Petty Officer of the Coast Guard – Reserve Component, The Deputy Commander for Mobilization and Reserve Affairs Atlantic Area, and Personnel Service Center Advancements.

The applicant noted that in 20xx, when she was no longer eligible for advancement because she had more than 28 years of service,⁴ three other reservists advanced from XXCS to XXCM. In support of this allegation, the applicant submitted the September 20xx Reserve man-power reports showing five XXCMs with less than 30 years of service. (Although the number of authorized XXCM billets remained at four, one XXCM who had been serving on active duty for several years returned to the SELRES and so the authorized number of Reserve XXCM billets was temporarily exceeded.)

VIEWS OF THE COAST GUARD

On February 24, 2012, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in this case.

The JAG stated that after taking the Reserve servicewide examination (SWE) in October 2009, the applicant was first on the advancement list for advancement to XXCM in calendar year 20xx. The JAG alleged, however, that the Service “had no vacancies or service need to advance the applicant” in 20xx. Citing Article 5.C.1.a. of the Personnel Manual in effect in 20xx, the

³ The applicant's allegation suggests that she was at the top of the Reserve XXCM advancement list in effect in 20xx. The applicant failed to allege this fact or to submit the advancement list to prove it. However, the Coast Guard admitted in the advisory opinion that she was one of three XXCSes who took the Reserve servicewide examination for advancement to XXCM in October 2009, and that, as a result, she “was number one on the list to advance for calendar year 20xx.”

⁴ Under Article 7.C.12.b. of the Reserve Policy Manual (RPM), candidates for advancement to master chief petty officer (E-9) “must have at least two years of pay status eligibility remaining as computed from 1 January of the year following the October Service Wide Exam, to be eligible for advancement. Individuals scheduled for discharge, due to reach their 30 year pay base date (PBD) anniversary, or reaching maximum age for mandatory retirement during the two year period following the 1 January date are ineligible to participate.” Because the applicant had 28 years of military service as of March 5, 20xx, she was not allowed to take the servicewide examination to compete for advancement in October 20xx and so was not on the advancement list in effect in 20xx.

JAG argued that “Coast Guard policy with respect to enlisted advancements is well settled in that [t]he objective of the enlisted advancement system is to ensure the required degree of proficiency at the various grade levels within each specialty and promote those best qualified to fill **vacancies** which occur.” (Emphasis in original.) The JAG stated that the applicant’s reliance on the Coast Guard Reserve’s manpower reports to assert that there were Reserve XXCM vacancies in 20xx is erroneous but did not explain why except to note that Service needs, as well as vacancies, play a role in whether members are advanced.

The JAG noted that enlisted members compete for advancement “irrespective of the availability of anticipated vacancies” and that cutoff points for guaranteed advancement are “based upon **vacancies** anticipated at the time the eligibility list is compiled.” The JAG stated that members below the cutoff should plan to re-compete for advancement and that it is unknown why the applicant did not take the October 20xx SWE.⁵

The JAG argued that the applicant “has failed to show an error or injustice with regard to her advancement opportunities. The Applicant’s assertions are speculative at best and failed to show the CG did not follow its policy or law regarding the advancement processes.” Therefore, the JAG argued that the Board should deny the application.

In recommending denial, the JAG adopted the findings and analysis in a memorandum on the case submitted by Commander, Personnel Service Center (PSC). PSC stated that there was no Service need to advance a XXCS to XXCM in 20xx and that the Reserve manpower reports are just “one tool that the Coast Guard uses to determine the number of reservists that advance each month.” PSC alleged that the applicant did not prove the Coast Guard committed any error by not advancing her. Therefore, PSC recommended that the Board deny the application.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 17, 2012, the applicant submitted her rebuttal to the views of the Coast Guard. The applicant alleged that, contrary to the Coast Guard’s claims, reservists’ advancements are determined by vacancies alone—i.e., by comparing the number of authorized positions (billets) to the manpower strength by paygrade. She noted that in 2006, the Reserve Policy Manual (RPM) was amended because too many Reserve billets were standing empty while the incumbents filled active duty billets. The amended RPM (Change 3) provided that reservists serving on active duty for more than 180 days no longer counted as part of the Reserve manpower strength and counted as part of the active duty manpower strength instead. Therefore, she should have advanced to XXCM because there were two vacancies shown on the Reserve Manpower Report, which, she alleged, “is the only tool necessary to determine the number of reservists that advance each month.”

The applicant alleged, however, that the new policy in Change 3 was not properly followed in 20xx. Late in 20xx, while discussing this issue with the active duty Master Chief of the Coast Guard, he told her that “[a]lthough this does not help your situation or the few others affected in FY 20xx, I have heard from a reliable source that members on ADOS [active duty]

⁵ *But see* note 3, above, for explanation of applicant’s ineligibility to take the SWE in October 20xx because she had more than 28 years of service.

for over 180 days will not be considered in future advancements.” Subsequently, in 20xx, Reserve XXCMs serving on ADOS for more than 180 days were not counted in determining the SELRES manpower strength and three XXCSes advanced to XXCM. However, the applicant argued, the new policy had been in effect since 2006 and should have been applied in 20xx. She alleged that if it had been, she would have advanced to XXCM.

The applicant alleged that the Coast Guard’s reliance on an alleged lack of Service need for another XXCM is erroneous and noted that the Coast Guard did not cite any regulation or policy providing that advancements depend upon Service need, as well as on vacancies in authorized billets. She noted that while the Personnel Manual contains the phrase “Service need” 134 times, the phrase does not appear anywhere in Article 5.C. of the Personnel Manual, which governs the advancement of enlisted personnel. In addition, the phrase appears three times in the RPM, but not once in the Chapter 7.C., which governs the advancement of enlisted reservists.

The applicant further stated that the role of the Reserve itself illustrates why “Service need” is not a reasonable explanation or basis for not advancing her when there were two open Reserve XXCM billets. She explained that in the regular Coast Guard, 18 active duty XXCM billets have been created based on actual Service needs, every billet is filled, and if one became vacant, a reservist would likely be asked to fill it temporarily. Thus, a reservist meets Service needs when called to active duty, not by drilling.

The applicant explained that when the Reserve integrated with the active duty force in the late 1990s, the Reserve originally assigned its four XXCM billets to the four units where Reserve XXCMs happened to be serving. However, the Service’s needs for reservists to fill in or otherwise augment the active duty force vary, are somewhat unpredictable, and do not necessarily occur at the units or in the regions where the Reserve XXCM billets are officially located. In this regard, she noted that currently, of the four authorized Reserve XXCM billets, only one of the four is filled even though, due to the 20xx advancements, there are more than enough XXCMs to fill the four positions.

The applicant stated that in the early 20xx, one Reserve XXCM retired and three Reserve XXCSs were advanced to XXCM to fill the three open XXCM billets—one new billet due to the retirement and the same two that were vacant in 20xx. She alleged that the three were advanced not because the number of XXCM billets increased or because “Service needs” increased but only because the Service finally decided to adhere to Chapter 1.C.2. of the RPM, which had been in effect since 2006 and therefore counted the Reserve XXCMs on active duty against the active duty force strength, instead of the Reserve force strength; acknowledged the vacancies in the Reserve XXCM force strength; and promoted reservists to fill those vacancies. However, in 20xx, because the Service refused to follow its own regulation and was still holding Reserve billets open for reservists serving on ADOS, she was denied advancement. The applicant noted that by September 20xx, the number of Reserve XXCMs exceeded the limit of four because after the three advancements, one Reserve XXCM left active duty to return to the SELRES.

The applicant argued that she has proved that the Coast Guard failed to follow its own regulation in Chapter 1.C.2.b.(1) of the RPM because there were two vacant Reserve XXCM billets in 20xx, and she was at the top of the advancement list. The applicant noted that because

she is retiring as of July 1, 2012, the requested correction to her record would not prevent anyone else from being advanced to XXCM, but it would give her the retirement pay she is entitled to because under the regulations, she should have advanced to XXCM in 20xx.

APPLICABLE REGULATIONS

Reserve Policy Manual

According to Chapter 1.C.2. of the RPM in effect in 20xx (Change 3), the Ready Reserve consists of the Selected Reserve (SELRES) and the Individual Ready Reserve (IRR). Reservists in the SELRES, the IRR, or on the Active Status List of the Standby Reserve are considered to be in an active status.

Chapter 1.C.2.b(1) of the RPM states that “reservists performing ADSW [Active Duty for Special Work⁶] for a period greater than 180 days and Extended Active Duty are removed from the Ready Reserve and counted in the active component end strength.”

Chapter 5.A.10. of the RPM states, “For reservists, advancement and promotion are centralized while assignment is decentralized. This means that advancement does not depend on a local vacancy, but on a national vacancy. Situations may occur where a person is advanced based on a vacancy located in a distant geographic region, and cannot fill the position. Or there could be an empty position at a unit where a person is next on the advancement list, but if there is a nationwide surplus in that rating or pay grade, the person won’t be advanced.” Chapter 5.A.10.c. specifies that “[a]s members become more senior, the opportunities for assignments within Reasonable Commuting Distance (RCD) are increasingly scarce. Since the number of paid SELRES O-5/O-6 and E-8/E-9 positions is limited, it is possible that if a person wants to continue to serve in a paid SELRES status at these senior grades, he or she may have to agree to assignment beyond RCD of his or her residence.”

Chapter 5.B.8. states that “[c]hief warrant officers and enlisted members may be assigned to the SELRES during their first 30 years of service. Normally, on the thirtieth anniversary of their pay base dates, chief warrant officers and enlisted members shall be transferred to the Inactive Status List, Standby Reserve, unless they have requested transfer to the IRR, requested retirement, or have been granted waivers by the Personnel Command (CGPC-rpm) to remain in the SELRES. See Sections 8.A.7.b and 8.B.4.” Chapter 8.B.4. states that “[e]nlisted members shall be removed from active status after completing 30 total years of service. To satisfy a specific Service need, Commandant may defer mandatory transfer from an active status due to years of service. Enlisted members who desire to remain in an active status beyond 30 total years service may apply to the Personnel Command (CGPC-rpm) via the chain of command and their servicing ISC (pf). See Section 5.B.8 of this manual.” And Chapter 8.C.12.d. states that “[a]ny enlisted member or chief warrant officer qualified for retirement who does not request transfer to the Retired Reserve will be transferred to the Inactive Status List (ISL), Standby Reserve on the day the member completes 30 total years of service.”

⁶ In October 2009, voluntary, short-term stints of active duty performed by reservists, known as Active Duty for Special Work (ADSW), was renamed Active Duty for Operational Support (ADOS).

Chapter 7.C. of the RPM governs the advancement of enlisted reservists. Chapter 7.C.1. of the RPM states “[t]he provisions of the Personnel Manual, COMDTINST M1000.6 (series), apply to advancements of Reserve enlisted personnel except as specifically modified by this section.”

Chapter 7.C.5.a. states that candidates for advancement to chief, senior chief, or master chief petty officer “must have at least two years of SELRES eligibility remaining as computed from the 1 January terminal eligibility date to be eligible for advancement. Individuals scheduled for separation, due to reach their 30 year pay base date anniversary, or reaching maximum age for mandatory retirement during the two year period following terminal eligibility date are ineligible to compete for further advancement.”

Coast Guard Personnel Manual

Article 4.C. of the Personnel Manual in effect in 20xx (Change 42) pertains to the assignment of enlisted members but also contains provisions pertinent to their advancement. Article 4.C.3.b. states that “[e]nlisted advancements occur when a vacancy is created in the higher pay grade. This means that a need exists for a member in the higher pay grade to fill a higher pay grade position. Although every effort will be made to minimize unscheduled, unplanned, and transfers prior to tour completion, these may be required to meet Service needs.”

Article 4.C.3.f.e. states that “[a]dvancements recognize the member's accomplishments and reaffirm the Service's faith and confidence in the member to assume positions of increased leadership and responsibility. It is important for members and commands to remember advancements are possible only because position vacancies exist somewhere in the Service, so transfers to fill those vacancies are likely to occur. Assignment Officers (AO) consider these factors when members advance: 1. “Service Need” is the main criterion in determining when or where to assign a newly advanced member.”

Article 5.C. contains the procedures and criteria for the advancement of enlisted members. Article 5.C.1.a. states that “[t]he objective of the enlisted advancement system is to ensure the required degree of proficiency at the various grade levels within each specialty and promote those best qualified to fill vacancies which occur.”

Article 5.C.26.a.1. states that “Commander (CGPC) will publish a list of personnel eligible for advancement or change in rating as a result of SWE competition to fill vacancies in pay grades E-4 through E-9. Commanding officers may advance personnel listed on the monthly Advancement Announcement.”

PSC issues a monthly “Enlisted Reserve Advancement Announcement” publishing the names of enlisted Reserve personnel who are authorized advancement as of the first of the month. The advancement announcements for 20xx show that no Reserve XXCS advanced to XXCM in 20xx. They also show that overall, just twelve senior chief petty officers advanced to master chief in 20xx, including one in the IV rating as of November 1, 20xx.

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 over this matter pursuant to 10 U.S.C. § 1552. The application was timely filed.

2. The applicant alleged that the Coast Guard erroneously and unjustly failed to advance her to XXCM when there were two vacancies for Reserve XXCMs while she was at the top of the Reserve XXCM advancement list in 20xx. She alleged that the only reason she was not advanced in 20xx was that the Coast Guard determined that there was no vacancy to warrant her promotion because the Coast Guard failed to follow its rule in Chapter 1.C.2.b(1) of the RPM, which states that “reservists performing ADSW for a period greater than 180 days and Extended Active Duty are removed from the Ready Reserve and counted in the active component end strength.”

3. 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. 33 C.F.R. § 52.24(b). 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.” *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

4. The Board finds that the applicant has proved by a preponderance of the evidence that there were two unfilled XXCM positions on the Reserve Personnel Allowance List (RPAL) in October 20xx. The October 31, 20xx, Reserve Manpower Reports clearly show that there were four authorized XXCM positions and only two qualifying Reserve XXCMs.⁷ In addition, the record shows that the applicant was number one on the Reserve XXCM advancement list in effect in 20xx but that no Reserve XXCM advancements were made in 20xx.

5. Chapter 7.C. of the RPM states that the Personnel Manual governs the advancement of enlisted reservists “except as specifically modified by this section.” Article 4.C.3.b. of the Personnel Manual states that “[e]nlisted advancements occur when a vacancy is created in the higher pay grade. This means that a need exists for a member in the higher pay grade to fill a higher pay grade position.” Article 5.C.1.a. states that “[t]he objective of the enlisted advancement system is to ensure the required degree of proficiency at the various grade levels within each specialty and promote those best qualified to fill vacancies which occur.” Therefore, the Board finds that a reservist may not be advanced unless there is need to fill a vacancy in the next higher pay grade.

6. However, the Board cannot find any regulation requiring every vacancy on the RPAL to be filled within a certain period of time or to be filled regardless of the Reserve's per-

⁷ Reservists who have more than 30 years of service or who are serving on active duty for a period of more than 180 days do not count in the calculation of the Reserve force strength.

ceived current needs for personnel in the higher paygrade or to fill a particular billet. While the distribution of positions on the RPAL presumably reflected the needs of the Service whenever the RPAL was most recently reviewed and revised, the applicant has not shown that the 20xx “Reserve (SELRES) Manpower Report – Positions” closely reflected the Service’s actual needs regarding the distribution of personnel in 20xx. In this regard, the Board notes that, even taking into account the number of general petty officer positions, the distribution of personnel on the October 31, 20xx, “Reserve (SELRES) Manpower Report – Strength by Paygrade” does not closely match the authorized positions shown in the 20xx “Reserve (SELRES) Manpower Report – Positions.” Similarly, the 20xx advancement announcements show that apparent vacancies in the higher pay grades, as shown on the manpower reports, did not always result in prompt advancements.

7. In addition, the applicant herself noted that although there were several Reserve XXCMs in 20xx, only two of the four designated XXCM billets were filled, and currently, only one of the four billets is filled even though three reservists advanced to XXCM in 20xx.⁸ Therefore, it appears that the Coast Guard has advanced reservists to XXCM with little regard for the officially designated XXCM billets, and there is no close connection between the actual needs of the Service for XXCMs and the four billets authorized on the RPAL. Although the applicant argued that this disconnection proves that only vacancies matter in the advancement of reservists and that Service need is not a factor, the Board finds insufficient evidence in the record to support this claim.

8. Although the applicant alleged that she was told that the only reason she was not advanced in 20xx was that the Coast Guard chose to disregard the rule in Chapter 1.C.2.b(1) of the RPM, she submitted little to support this claim. A Government agency is bound to follow its own regulations, but the fact that three XXCSs advanced to XXCM in 20xx does not *per se* prove that the only reason the applicant did not advance in 20xx was that the Coast Guard arbitrarily chose to disregard Chapter 1.C.2.b(1) until 20xx. In the advisory opinion, the Coast Guard cited a lack of a Service need for another Reserve XXCM as the reason the applicant did not advance. Although the Coast Guard’s advisory opinion is conclusory and uninformative of the circumstances surrounding the applicant’s lack of advancement in 20xx, the Coast Guard’s unsubstantiated claim regarding a lack of a Service need is sufficient to rebut the applicant’s unsubstantiated claim that the only reason she was not advanced in 20xx was that the Coast Guard chose to disregard the rule in Chapter 1.C.2.b(1) of the RPM.

9. In light of the findings above and given (a) the absence of a regulation requiring every vacancy on the RPAL to be filled promptly and regardless of Service needs, as perceived by Commander, PSC; (b) no apparent close connection between authorized positions and the distribution of Reserve XXCMs; (c) no evidence showing that the Coast Guard has religiously and promptly advanced reservists to fill all master chief petty officer positions shown on the RPAL in the past; and (d) no allegation or evidence that the applicant’s lack of advancement was due to prejudice of any ilk, the Board finds that she has not proved by a preponderance of the evidence that she was entitled to advancement to XXCM in 20xx or that she was unjustly denied advancement. The Board acknowledges the tremendous effort a reservist must make throughout

⁸ Nor is this the first time the Board has heard of apparent vacancies on the RPAL going unfilled. *See e.g.*, BCMR Docket No. 2007-208.

her career to be in a position to advance to XXCM should the Service need another Reserve XXCM, as well as the frustration inherent in getting so close to advancement, but there is insufficient evidence in the record to overcome the presumption of regularity and prove that her lack of advancement in 20xx was erroneous or unjust.

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

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxx, USCGR, for correction of her military record is denied.

Troy D. Byers

Francis H. Esposito

Donna A. Lewis