

**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. 2007-110**

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**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 on March 8, 2007, upon receipt of the completed application, 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 November 29, 2007, 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 asked the Board to correct his record to show that he was timely advanced to the rate of machinery technician, second class (MK2/E-5) off of the advancement list in 2004 and that he reenlisted for four years on April 15, 2004, to receive an SRB under ALCOAST 182/03. The applicant alleged that the MK2 End of Course examination he took in April 2004 was incorrectly graded and, as a result, he was not timely advanced and was not eligible to reenlist for a selective reenlistment bonus (SRB). In support of his request, the applicant submitted the following:

- A memorandum from the Coast Guard Institute to the applicant’s command, dated February 22, 2006, states that a “scoring error was discovered, and your MK2 test administered on April 15, 2004, has been rescored, resulting in a passing score.”

- ALCOAST 070/06, dated February 9, 2006, states that scoring errors at the institute “may have resulted in missed or delayed advancement eligibility for affected CG members.” The ALCOAST explained how commands could verify affected members’ qualifications for advancement and inform the Personnel Service Center (PSC) of the dates the command would have asked that their names be placed on the advancement lists had the scoring errors not occurred.

- A message dated March 30, 2006, from the applicant’s current command to the PSC states that the “institute erroneously graded [the applicant’s] end of course test. [He] re-took and passed the test on 09/09/2004 and was put on the advancement list as of that date. [He] should have been placed on the list on 04/15/2004. Depending on the correct date [he] would have been

advanced to MK2, he may have been able to receive a SRB when he reenlisted and may be due back pay and BAH.”

- An email dated June 7, 2006, from a yeoman to the applicant states that he is “ineligible to receive or recoup any SRB” for his April 22, 2004, extension because the contract was signed more than a month before he advanced to MK2. The yeoman wrote that if he had waited until June to sign the extension contract, he would have been entitled to the SRB.
- Documentation showing that his active duty base date is May 27, 2001.

### **SUMMARY OF THE MILITARY RECORDS**

On July 25, 2001, the applicant enlisted in the Coast Guard for four years, through July 24, 2005. He had previously performed 58 days of active service as a reservist.

On January 16, 2004, the applicant, an MK3, received orders to transfer from his overseas unit to a unit in California. The orders indicated that his departure date from his overseas unit was June 1, 2004, and that he should report to his new unit on July 1, 2004. The orders further show that the applicant requested 37 days of leave beginning on May 20, 2004, and that he was given 6 days of proceed and travel time from June 26 through July 1, 2004. To accept the transfer orders, the applicant was required to have at least four full years of service obligation upon reporting to the new unit.<sup>1</sup> Since his end of enlistment (EOE) at the time was July 24, 2005, he needed to obligate at least 36 more months of service, from July 25, 2005, through July 24, 2008, before reporting to his new unit on July 1, 2004.

On April 15, 2004, the applicant took an MK2 End of Course test through the Coast Guard Institute. The institute reported that he had not passed the test.

On April 22, 2004, the applicant’s command submitted his performance evaluation for the period ending March 31, 2004. He was recommended for advancement.

Also on April 22, 2004, the applicant signed a 36-month extension contract to accept his transfer orders. At the time, ALCOAST 182/03 authorized no SRB multiple for MK3s but a multiple of 1.5 for MK2s. As an MK3, the applicant was not authorized or promised an SRB.

On May 20, 2004, the applicant began 37 days of leave and then 6 days of proceed and travel time pursuant to his transfer orders from his overseas unit to California.

On May 24, 2004, the Commandant issued ALCGENL 088/04, which announced that as of June 1, 2004, certain advancements could be made from the MK2 advancement list as long as the listed members were recommended for advancement by their commands<sup>2</sup> and met the other eligibility criteria in Article 5.C. of the Personnel Manual.

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<sup>1</sup> Article 4.B.6.a.2. of the Personnel Manual states that members with less than six years of active service will not normally be transferred to a new unit unless they obligate sufficient service to complete a full tour of duty at the new unit before reporting there. Under Article 4.A.5.a.2., a full tour at the applicant’s new unit in California was 4 years.

<sup>2</sup> Article 5.C.4.e.4. of the Personnel Manual states that “[t]he commanding officer's recommendation for advancement or change in rating by participation in the SWE is valid only for a specific competition and must be renewed for each succeeding competition.”

In September 2004, the applicant passed a subsequent End of Course test, and he advanced to MK2 on February 1, 2005. However, when scoring errors were discovered in 2006, PSC retroactively placed the applicant's name on the advancement list as of April 22, 2004, which is the date his command completed his eligibility for advancement by submitting his performance evaluation for the period ending March 31, 2004, with his commanding officer's recommendation for advancement. As a result, his date of advancement to MK2 was backdated to June 1, 2004, which is the date of rank he would have had if his name had actually been placed on the list on April 22, 2004, and he received back pay and allowances.

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

On July 31, 2007, the Judge Advocate General (JAG) of the Coast Guard recommended that the Board deny the applicant's request. He adopted the findings and analysis provided in a memorandum on the case prepared by the Coast Guard Personnel Command (CGPC).

CGPC stated that the applicant's adjusted date of rank as an MK2 was properly calculated to be June 1, 2004. CGPC further stated that the applicant chose to depart his overseas unit on leave on May 20, 2004, and was required to obligate sufficient service to accept his transfer orders before beginning his travel. Since even with the adjusted date of rank, he was still an MK3 when he left the overseas unit, he was not eligible for an SRB when he signed the extension contract on April 22, 2004. CGPC noted, however, that the applicant was entitled to reenlist on his 6<sup>th</sup> active duty anniversary for an SRB and that there is no documentation of timely SRB counseling in his record. Although the applicant did not request such relief, CGPC recommended that he be afforded the opportunity to reenlist for an SRB on his 6<sup>th</sup> anniversary.

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

On July 25, 2007, the Chair sent the applicant a copy of the JAG's advisory opinion and invited him to respond within thirty days. No response was received.

### **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 10 U.S.C. § 1552. The application was timely.

2. The applicant has proved by a preponderance of the evidence that, as a result of a scoring error, he was not advanced to MK2 until February 1, 2005. The Coast Guard stated that his date of rank has been retroactively backdated to June 1, 2004, and that he has received back pay and allowances. However, the applicant alleges that as a result of not being timely advanced, he missed an opportunity to receive a Zone A SRB. To prevail on his claim, the applicant must

show that, if the test had been properly scored in April 2004, he would have been eligible for the SRB when he extended his enlistment to accept his transfer orders.<sup>3</sup>

3. The applicant alleged that, had no scoring error been made, his name would have been placed on the advancement list on April 15, 2004. His command's message to the PSC dated March 30, 2006, supports this allegation. However, the applicant's performance evaluation was not completed and submitted until April 22, 2004. In fixing the problems created by the scoring errors, in accordance with ALCOAST 070/06, CGPC determined that the applicant first became eligible for advancement on April 22, 2004, because that was the date CGPC received his performance evaluation with his commanding officer's recommendation for advancement. Under Article 5.C.4. of the Personnel Manual, a recommendation for advancement on the member's performance evaluation for the most recent evaluation period is an essential requirement for advancement. Therefore, the Board finds that the applicant has not proved that CGPC erred in placing his name on the advancement list as of April 22, 2004, rather than April 15, 2004.

4. Moreover, the applicant has not shown that if his name had been placed on the advancement list as of April 15, 2004, instead of April 22, 2004, he would have been advanced to MK2 any earlier than June 1, 2004, pursuant to ALCGENL 088/04.

5. The applicant signed his extension contract on April 22, 2004, when he was an MK3 and therefore ineligible for an SRB under ALCOAST 182/03. If no scoring error had been made, he would have timely advanced to MK2 and been eligible for an SRB as of June 1, 2004. This circumstance raises the question of whether, if no scoring error had been made, the applicant would have known that he would be advanced on June 1, 2004, and would have been able to delay signing his extension contract until that date. However, the applicant left his command on leave on May 20, 2007, and was required to accept his transfer orders by obligating the 36 months of additional service before leaving his old unit. ALCGENL 088/04, which announced the names of those members who could be advanced to MK2 on June 1, 2004, was not issued until May 24, 2007. Therefore, there is no way that the applicant or his command could have known in April or early May 2004 that he would be advanced to MK2 on June 1, 2007, and so become eligible for an SRB. The applicant has not proved by a preponderance of the evidence that he was deprived of an opportunity to earn an SRB in 2004 because of the Coast Guard Institute's scoring error.

6. As CGPC noted in the advisory opinion, the applicant was eligible to reenlist on his 6<sup>th</sup> active duty anniversary for an SRB under ALCOAST 283/06. According to a Statement of Creditable Service in his record, the applicant's active duty base date is May 27, 2001. Therefore, his 6<sup>th</sup> anniversary would have been May 27, 2007, and there is no documentation of SRB counseling on that date as required by Article 3.C.11.2. of the Personnel Manual.

7. Accordingly, the applicant's request should be denied, but alternative relief should be granted by offering him the opportunity to reenlist on his 6<sup>th</sup> anniversary for a Zone A SRB under ALCOAST 283/06.

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<sup>3</sup> Title 10 U.S.C. § 1552 "entitles a complainant to nothing more than placement in the same position he would have been had no error been made." *Denton v. United States*, 204 Ct. Cl. 188, 199-200 (1975).

**ORDER**

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is denied, except that the Coast Guard shall counsel him about SRBs and offer him the opportunity to reenlist as of his 6<sup>th</sup> active duty anniversary for 3, 4, 5, or 6 years, at his discretion, to receive a Zone A SRB under ALCOAST 283/06.

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George J. Jordan

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James E. McLeod

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Dorothy J. Ulmer