

**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. 2010-057**

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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 after receiving the applicant's completed application on December 8, 2009, 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 October 8, 2010, 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 FS2 advancement date from September 1, 2009, to July 1, 2009, so that he will be eligible for a Zone B selective reenlistment bonus (SRB).<sup>1</sup> The applicant alleged that his command sent the message reporting his eligibility for advancement to the wrong electronic address on May 20, 2009, and so his name did not appear on the supplemental FS2 advancement list issued in June 2009, which authorized advancements on July 1, 2009. On June 11, 2009, when his command saw that his name was not on the advancement list, it discovered the error and sent the message to the correct address. However, because of the delay, he was not authorized advancement until September 1, 2009. If he had advanced to FS2 on July 1, 2009, the applicant could have reenlisted for an SRB between July 2, 2009, and his 10<sup>th</sup> active duty anniversary, July 20, 2009. However, because he was still an FS3/E-4 in July 2009, he was never eligible for a Zone B SRB.<sup>2</sup>

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<sup>1</sup> SRBs are bonuses the Coast Guard offers to members in certain skill ratings as an extra inducement to reenlist. SRBs vary according to the length of each member's service, the number of months of service newly obligated by the reenlistment or extension contract, and the need of the Coast Guard to retain personnel with the member's particular skills, which is reflected in the "multiple" of the SRB authorized for the member's rating, which is published in an ALCOAST. Members who have at least 17 months but no more than 6 years of active duty service are in "Zone A." Members who have completed at least 6 years but no more than 10 years of active duty service are in "Zone B." Members may not receive more than one bonus per zone. Personnel Manual, Article 3.C.4.

<sup>2</sup> Being in pay grade E-5 or higher is one of the basic criteria for receipt of a Zone B SRB. Personnel Manual, Article 3.C.4.b.4.

In support of these allegations, the applicant submitted copies of the electronic messages that his command sent on May 20 and June 11, 2009, regarding his eligibility for advancement, and copies of the advancement lists at issue and the bulletins authorizing advancements. The message dated May 20, 2009, shows that the applicant completed the final eligibility requirement on May 15, 2009.

The applicant also submitted a memorandum from his commanding officer (CO), who strongly supported the applicant's request and explained the circumstances of the error in detail. The CO stated that the command's message of May 20, 2009, went astray because the Pay and Personnel Center (PPC) and Personnel Service Center (PSC) received new electronic message addresses while their cutter was underway on a long deployment. He recommended that the Board backdate the applicant's date of advancement to July 1, 2009, and award him backpay and allowances. The CO further explained that because the applicant's enlistment was ending on July 27, 2009, he needed to reenlist. Because the applicant was still an FS3 in July 2009, and FS3s were ineligible for SRBs, he reenlisted on July 23, 2009, with no promise of an SRB. Moreover, because the applicant's 10<sup>th</sup> active duty anniversary was July 20, 2009, he would never be eligible for a Zone B SRB. However, the CO stated, if the applicant had advanced to FS2 on July 1, 2009, he would have been eligible to reenlist for six years on July 15, 2009, for a Zone B SRB calculated with a multiple of 3 under ALCOAST 286/08. (On July 16, 2009, ALCOAST 353/09 went into effect and the Zone B SRB multiple for FS2s fell to 1.5.)

### **SUMMARY OF THE RECORD**

On July 20, 1999, the applicant enlisted in the Coast Guard for four years. He advanced to FS3/E-4 on July 7, 2000. On May 28, 2003, he reenlisted for six years, through May 27, 2009, and received a Zone A SRB. On April 7, 2008, he extended his six-year enlistment for two months, from May 28, 2009, to July 27, 2009.

July 20, 2009, was the applicant's 10<sup>th</sup> anniversary on active duty and the end of Zone B for him. On July 23, 2009, the applicant signed an indefinite reenlistment contract with no promise of an SRB. On September 1, 2009, he advanced to FS2.

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

The Judge Advocate General (JAG) of the Coast Guard stated that typically when the proper personnel office receives a message about a member's eligibility for advancement on a supplemental advancement list one month, the member's name is added to the list the following month, and "the member is advanced the third month." Therefore, when the applicant's command sent a message about his eligibility for advancement to an electronic address that had recently become invalid, the applicant's advancement to FS2 was delayed to September 1, 2009. However, the JAG stated that the Coast Guard does not backdate dates of advancement caused by such administrative errors.

The JAG recommended that the Board grant relief not by backdating the applicant's advancement but by reenlisting him for six years on his 10<sup>th</sup> anniversary, July 20, 2009, instead

of July 23, 2009, and instructing him to request a waiver of the temporary suspension of the SRB program that went into effect on July 16, 2009, under ALCOAST 393/09.<sup>3</sup> The JAG alleged that this correction would cause the applicant to be eligible for an SRB.

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

On May 17, 2010, the applicant responded to the JAG's advisory opinion and said he had no objection to the recommendation therein.

### **FURTHER INQUIRY BY THE BCMR**

On September 19, 2010, the BCMR asked the PSC for (1) the date stamp of the message sent by the command of the last FS3 authorized advancement to FS2 on July 1, 2009, to the PPC about that member's eligibility for advancement to FS2; and (2) the date stamp of the message sent by the command of the first FS3 authorized advancement to FS2 on August 1, 2009, to the PPC about that member's eligibility for advancement to FS2.

In response, the PPC stated that the date stamp of the message received by the PPC from the command of the last FS3 authorized advancement to FS2 on July 1, 2009, was May 21, 2009, which was after the date the applicant's command first attempted to send the message regarding his eligibility for advancement. The PPC further stated that the date stamp of the message received from the command of the first FS3 authorized advancement to FS2 on August 1, 2009, was June 3, 2009. The PPC also noted that both of these members completed all of the eligibility requirements for advancement prior to May 15, 2009, which is the date that the applicant completed his final eligibility requirement, but their commands were slower to send their messages to the PPC.

### **APPLICABLE REGULATIONS**

Under Article 5.C.26.a.1. of the Personnel Manual, the PSC may authorize advancements of enlisted members to pay grades E-4 through E-9 to fill vacancies. Under Article 5.C.3.b., members are normally advanced in order off an advancement list of eligible members who are listed in accordance with a "final multiple," which is calculated based upon each member's score on a servicewide examination (SWE) conducted each May, performance evaluations, time in grade, time in service, medals, and sea or surf duty time. However, Article 5.C.3.d. authorizes the advancement of members off supplemental advancement lists compiled without participation in an SWE by special authority of the Commandant.

On January 24, 2009, the Commandant issued ALCOAST 050/09, which waived the SWE and established supplemental advancement lists for the FS2 rating and a few other ratings. ALCOAST 050/09 states that if members completed the rating-specific advancement eligibility requirements, their commands should send messages to the PPC noting the dates of completion

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<sup>3</sup> Due to a lack of funds, the SRB program was temporarily suspended through the end of the fiscal year by ALCOAST 393/09, but paragraph D of the ALCOAST allowed personnel who were otherwise eligible for an SRB and whose 6<sup>th</sup> or 10<sup>th</sup> anniversary fell between July 16 and September 30, 2009, to request and receive a waiver of the suspension so that they could receive an SRB by reenlisting on their anniversary.

of each requirement and requesting the member's placement on a supplemental advancement list. Paragraph 10 of the ALCOAST states that members are listed on supplemental advancement lists "based solely on the date-time-group (DTG) of the request msg. Commands should send a msg as soon as the member meets all advancement eligibility requirements and should contact PPC(ADV) if an acknowledgement msg is not received within five working days."

## 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 because of an administrative error, his advancement was delayed from July 1, 2009, to September 1, 2009, and that the delay rendered him ineligible for a Zone B SRB in July 2009. 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).

3. The applicant submitted his command's messages requesting his placement on the supplemental advancement list dated May 20, 2009, and June 11, 2009. In addition, the applicant's allegations are strongly supported by his CO, who explained that the message dated May 20, 2009, was mistakenly sent to the wrong electronic address for PPC because of the renaming of the PSC and PPC. Under ALCOAST 050/09, members were listed on supplemental lists in chronological order according to when their commands' messages requesting their placement on the supplemental lists were received by the PPC. The PPC has stated that the message requesting placement on the supplemental list for the last FS3 authorized advancement on July 1, 2009, was dated May 21, 2009. Therefore, if the message sent by the applicant's command on May 20, 2009, had not been misdirected, the applicant's name would have been above that FS3's name on the supplemental advancement list, and the applicant would have advanced to FS2 on July 1, 2009, instead of him. Thus, the applicant has proved by a preponderance of the evidence that his advancement was delayed from July 1, 2009, to September 1, 2009, because of an administrative error.

4. According to the PPC, however, the last FS3 authorized advancement on July 1, 2009, actually completed his eligibility requirements before the applicant did. The same is true of the first FS3 authorized advancement on August 1, 2009. Therefore, their commands also may have erred by misdirecting their messages regarding their members' eligibility for advancement, or their commands could be said to have erred by unduly delaying these messages. Presumably, the arrival time of every such message received by the PPC is affected by numerous factors within the members' commands.

5. Under ALCOAST 050/09, the PPC places members on supplemental advancement lists in an order “based solely on the date-time-group (DTG) of the request msg.” This rule was apparently chosen for reasons of administrability because many other bases for ranking eligible members could have been adopted, such as the members’ time in service, time in grade, or time of completion of the advancement eligibility requirements. The Board notes that any of these other criteria would likely appear fairer to enlisted members, who have little if any control over how fast their request chits are processed by their chains of command. Using the DTG stamp may be easiest for the PPC, but it clearly leaves members’ advancements at the mercy of their commands’ administrative efficiency, which apparently varies greatly. The Board recommends to the Coast Guard that it strongly consider requiring members’ commands to submit messages requesting placement on the supplemental advancement list within a specific time frame of the member’s completion of his or her final requirement. It is also the Board’s recommendation that this time frame be a matter of days, and not weeks or months.

6. In BCMR Docket No. 2006-116, the applicant was an MK3 whose command mistakenly delayed sending the message requesting his placement on an MK2 supplemental advancement list for three months. In that case, the Coast Guard stated that the policy applied in ALCOAST 359/05 of using only DTGs to sequence members on the supplemental advancement list was intended to ensure that names are sequenced on the list by a standard procedure and that “strict adherence to the date-time-group criteria is essential to the overall fairness of the process.” The Coast Guard further argued the following:

If the Coast Guard were to deviate from policy in this case, the 38 personnel who would be displaced on the list would be unfairly disadvantaged. Additionally, it is very likely that any of those displaced personnel could claim that their message submission was delayed by their command by matters of days, weeks or even months as in the case of this Applicant. Therefore, any digression from policy would create significant disruptions within the advancement system and undermine fairness. The supplemental advancement lists are published on the CG Personnel Command Website and [ALCOAST 359/05] provides a mechanism for units and members to ensure that their Supplemental Advancement List placement was properly executed.

The Board recommended granting relief in Docket No. 2006-116, finding that the circumstances of the case shocked their sense of justice, but the delegate of the Secretary disapproved the Board’s decision and denied relief because “[t]he regulations are written to promote appropriate sequencing, fairness, and uniformity. Deviations from policy have the potential to create disruptions. ... That the applicant was not able to obtain an early promotion under the facts of this petition, and instead, was only able to receive a promotion through the SWE within a year does not ‘shock my sense of justice’ and I do not find it an ‘injustice’.”

7. The Board dislikes the PPC’s reliance on DTGs in ordering members on supplemental advancement lists. However, the facts of this case are substantially similar to the facts in Docket No. 2006-116, in which the delegate of the Secretary upheld the Coast Guard’s use of the DTG as a bright-line rule. Therefore, in accordance with the decision of the delegate of the Secretary in that case, the Board finds that the applicant is not entitled to have his advancement backdated from September 1, 2009, to July 1, 2009, even though he presumably would have advanced on the earlier date if his command had known and used the correct electronic address on May 20, 2009.

8. The delay of the applicant's advancement, however, had a very harsh secondary effect that also shocks the Board's sense of justice.<sup>4</sup> Because of the misdirected message, the applicant's advancement to FS2/E-5 was delayed until after his 10th active duty anniversary, July 20, 2009. Therefore, he lost the opportunity to reenlist for a Zone B SRB because under Article 3.C.4.b. of the Personnel Manual, only members in pay grades E-5 and above may be eligible for Zone B SRBs.

9. The JAG recommended that the Board grant relief by backdating the applicant's reenlistment from July 23, 2009, to July 20, 2009, his 10th active duty anniversary. The applicant agreed with this recommendation. However, this correction alone would not cause the applicant to be entitled to an SRB because he was in pay grade E-4 throughout July 2009, and under Article 3.C.4.b. of the Personnel Manual, E-4s are never eligible for Zone B SRBs. In addition, under ALCOAST 393/09, the SRB program was suspended from July 16 to September 30, 2009, and members whose 6th or 10th active duty anniversary fell during that period needed waivers to be entitled to SRBs. However, given the JAG's recommendation for relief, the applicant's agreement, and the unjust loss of SRB eligibility resulting from his command's misdirected message, the Board finds that the applicant should be paid the Zone B SRB for which he would have been eligible on his 10th anniversary had he been an FS2/E-5 on that date.

10. Accordingly, partial relief should be granted by correcting the applicant's record to show that he reenlisted for six years on his 10th active duty anniversary, instead of signing the indefinite reenlistment contract on July 23, 2009, and to show that he was eligible for and entitled to an SRB under ALCOAST 353/09 as if he had been an FS2/E-5 on the anniversary and had been granted a waiver pursuant to ALCOAST 393/09.

**[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]**

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<sup>4</sup> Under 10 U.S.C. § 1552, the Board is authorized not only to correct errors but to remove injustices from any Coast Guard military record. For the purposes of the BCMRs, "[i]njustice", when not also 'error', is treatment by the military authorities, that shocks the sense of justice, but is not technically illegal." *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976). The Board has authority to determine whether an injustice exists on a "case-by-case basis." Docket No. 2002-040 (DOT BCMR, Decision of the Deputy General Counsel, Dec. 4, 2002). "Indeed, 'when a correction board fails to correct an injustice clearly presented in the record before it, it is acting in violation of its mandate.'" *Roth v. United States*, 378 F.3d 1371, 1381 (Fed. Cir. 2004) (quoting *Yee v. United States*, 206 Ct. Cl. 388, 397 (1975)). And "[w]hen a board does not act to redress clear injustice, its decision is arbitrary and capricious." *Boyer v. United States*, 81 Fed. Cl. 188, 194 (2008).

**ORDER**

The application of FS2 xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted in part as follows:

The Coast Guard shall correct his record to show that he reenlisted for six years on his 10th active duty anniversary and to show that he was eligible for and entitled to an SRB under ALCOAST 353/09 as if he had been an FS2/E-5 on the anniversary and had been granted a waiver pursuant to ALCOAST 393/09. The Coast Guard shall remove his July 23, 2009, indefinite reenlistment contract from his record as null and void and shall pay him the SRB he is due as a result of these corrections.

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Patrick B. Kernan

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Erin McMunigal

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Kathryn Sinniger