

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 109-97

FINAL DECISION

Chairman:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on April 29, 1997, upon the Board's receipt of the applicant's application for correction.

The final decision, dated March 26, 1998, is signed by the three duly appointed members who were designated to serve as the Board in this case.

Application for Relief

The applicant, a [REDACTED] pay grade E-6), asked the Board to correct his military record to show that he was eligible to receive sea pay while serving aboard the CGC [REDACTED] from April 1994 to May 1995, and while serving aboard CGC [REDACTED] from May 1995 to May 1997.

The applicant stated that a member serving on a 65-foot cutter was owed continuous career sea pay, pursuant to paragraph B.1. of ALDIST 249/96. Paragraph B.1. stated that: "On 30 Oct 96, the Commandant determined that members serving on 65-foot cutters . . . are therefore eligible for continuous career sea pay/time."

Views of the Coast Guard

On January 26, 1998, the Board received an advisory opinion from the Chief Counsel of the Coast Guard recommending that this application be denied. The Chief Counsel said that this applicant and other applicants who allege they are eligible for career sea pay due to service aboard 65-foot cutters should be denied relief because (1) the BCMR lacks jurisdiction to provide the requested relief; and (2) the applicants have not suffered an error or injustice.

The Chief Counsel asserted that the BCMR is without jurisdiction because section 3702 of title 31, U.S. Code, states that the "Secretary of Defense shall settle all claims of

or against the United States." He further said that "[e]ven if [the applicant] were to prove that they were entitled to additional sea pay, any remedy would be a matter for the claims process, not for the BCMR."

The Chief Counsel also said that sea pay was for persons aboard "ships" which are defined, for purposes of career sea pay, as vessels equipped with "Government operated or contractor furnished berthing and messing facilities which are regularly used for the intended purpose" He said that the vessels to which the applicants were assigned "were not equipped with 'government operated berthing and messing facilities.'"

The Chief Counsel said that the Commandant released an ALDIST message that extended the authorization for career sea pay to persons aboard 65 foot cutters. The ALDIST contains the following limitation, however : "This determination is effective on 30 Oct 96 and is not retroactive before that date for administrative purposes or for the purpose of pay or accumulated sea time." The Chief Counsel summarized that sentence as follows: "No retroactive payments are warranted."

Response of the Applicant to the Views of the Coast Guard

On January 28, 1998, a copy of the advisory opinion was sent to the applicant with an invitation to submit a response to it if he disagrees with the Coast Guard views.

The Board received a response from the applicant on February 5, 1998. The applicant said that he should receive 11 months and 11 days of sea pay/time, in addition to the four years and one month of sea time with which he was credited. The applicant said that the "determination not to make . . . sea pay retroactive . . . is erroneous."

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the submissions of the applicant and of the Coast Guard, the military record of the applicant, and applicable law.

1. The Board has jurisdiction of the case to the extent warranted by section 1552 of title 10, United States Code.

2. The applicant alleged that he did not receive sea pay for the period prior to October 30, 1996. He alleged that the Coast Guard has made a mistake in this matter.

3. Section 305a(c) of title 37, U.S.C. provides that the members of uniformed services are entitled to career sea pay under regulations by the President if they have

performed at least 36 months of sea duty. The power to prescribe the supplementary regulations was delegated, in the case of the Coast Guard, to the Commandant.

4. The applicable regulation in this case was issued by the Commandant as ALDIST 249/96. Paragraph 2, of this ALDIST provided that the regulation "is effective on 30 Oct 96 and is not retroactive before that date for administrative purposes or for purpose of pay or accumulated Sea Time."

5. The applicant has not introduced any evidence to the effect that the Coast Guard misled or counseled him into believing that sea pay was available under ALDIST 249/96 prior to the effective date for career sea pay for 65-foot cutter personnel.

6. The Coast Guard has asserted that the Board lacks jurisdiction to consider this application on the ground that the Comptroller General has exclusive authority to settle claims against the United States. The argument is without merit because this claim is not solely one against the United States for money. The applicant is asking for more; he is asking that the time he spent on certain vessels be reflected as sea duty for all purposes, including pay. BCMR Docket No. 72-97.

7. Notwithstanding, the application should be denied on the ground that the Coast Guard committed no error or injustice.

ORDER AND SIGNATURES ON FOLLOWING PAGE

ORDER

The application of [REDACTED]
his military record is denied.

[REDACTED] USCG, for correction of

