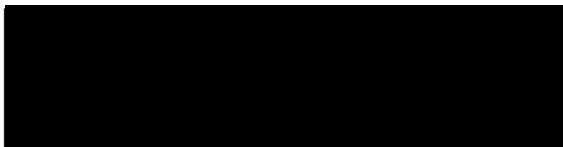



DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:



BCMR Docket
No. 11-97


FINAL DECISION

 Attorney-Advisor:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on October 16, 1996, upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated December 5, 1997, is signed by the three duly appointed members who were designated to serve as the Board in this case.¹

Applicant's Request for Relief

The applicant, a former petty officer, third class  (pay grade E-4), asked the Board to grant him "full separation pay for 11 years of active service."

The applicant alleged that he had been restricted from reenlisting in the service after the expiration of his first term of enlistment. He stated that he had passed the initial "sifting" stage of the reenlistment selection process for first-term reenlistments and had been selected for reenlistment. However, the applicant asserted that his commanding officer (CO), the captain of his unit, "blocked" his reenlistment and instead forced him to extend for a two-year period. His CO also put him on performance probation for six months to give him an opportunity to improve his performance.

The applicant enlisted in the Coast Guard on April 29, 1991 for a four-year term. Prior to entering the Coast Guard, he served six years in the Army.

¹ On November 5, 1997, the applicant requested an additional nine days to submit a response to the Coast Guard's comments in his case. The extension was granted, and the due date for completion of the final decision in his case was adjusted. The Board has completed this case within the statutory ten-month time period.

After completing [REDACTED] "A" school in 1991,² he [REDACTED]

Allegations of Error

The applicant stated that in April, 1995, he completed a form for submission before the "sifter board" (Centralized First Term Reenlistment Review - CFTRR), on which he indicated that he intended to reenlist. He stated that he submitted that form through his chain of command for approval. He then waited for some word from the CFTRR as to his eligibility to reenlist. He heard nothing.

The applicant alleged that he later learned from a Coast Guard friend that he was no longer eligible for reenlistment because he had missed the 60-day deadline imposed by the CFTRR provisions on members who wanted to reenlist. The applicant stated that there had been an announcement sent out in December 1994 which listed those members who were eligible to request reenlistment. The applicant stated that his name was on that list, but he never received a copy of that announcement nor was he notified by his command that he was eligible. He spoke with his supervisor about not receiving notification of the CFTRR list publication. He was told to submit a special request for reenlistment with the administrative office at his unit. He submitted the request and waited approximately one week for a response. The applicant stated that he never received a response from his command about his request. He asserted that he asked his supervisor about the delay, but the supervisor was unable to provide him with any information.

The applicant claimed that he then took his request to his CO and explained his situation. He expressed to the CO his concern to about being "labeled as someone who was unable to be taught, who was lazy in regards to work performance, and that [he] felt that [his] supervisors were not wanting [him] to reenlist." The applicant alleged that his CO told him that he should not have been processed through the CFTRR. The CO stated that he was away when the applicant's CFTRR application was forwarded through the chain of command. The CO asserted that if he had been at the unit when the applicant's packet was forwarded, he never would have recommended the applicant for reenlistment because of his poor performance as a petty officer.

The applicant alleged that after further discussion with his supervisors about his desire to remain in the Service, the applicant learned that his CO agreed to allow

² "A" School is the program through which the Coast Guard trains basic petty officers. [REDACTED] "A" School is the program to train petty officers for the [REDACTED] rating. The courses are designed to meet the "manpower training requirements at the specialty training level." See Article 5-A-2, Coast Guard Training and Education Manual (COMDTINST M1500.10B).

him to extend his enlistment for two years. The applicant would be put on 6 months' work probation during that two-year period. If his performance did not improve in that period, the applicant would be discharged from the Coast Guard.

The applicant agreed to extend his enlistment for two years on April 19, 1995. After that date, he stated that he continued with his normal responsibilities at his unit, and was assigned additional part-time responsibilities in the administrative unit. During his period of extension, the applicant was assigned various duties in different divisions of his unit. He stated that he was frequently overwhelmed with the many tasks for which he was responsible, and was harassed by his immediate supervisor.

The applicant stated that he was once hospitalized for chest pains while serving at the CGPPC. He stated that his supervisor was unsympathetic to his situation and demanded that the applicant appear in the office after he returned from the hospital. At that point, the applicant alleged that he "was at [his] limit" and he made a comment about shooting himself in the head. This comment was heard by the applicant's friend, who, in turn, reported the comment to the applicant's supervisor. The applicant alleged that after the supervisor heard the comment, he arranged for the applicant to be committed to the Veteran's Hospital mental health center and to be put on suicide watch.

The applicant remained in the mental health center from July 11, 1995 to July 24, 1995. During that period, he composed a letter to his CO in which he requested early release from the Coast Guard. He returned to his former post and waited for his discharge documents to be processed. He stated that he accepted an employment offer from the [REDACTED]. He asked his command for permission to use his accumulated leave to carry him to the discharge date so that he could accept the position with the [REDACTED]. Allegedly, the applicant's command approved his leave and he began working for the [REDACTED] on September 8, 1995. The applicant stated that after he had been working for the [REDACTED] for about a month, he received news from his Coast Guard unit that his request for discharge had been disapproved, and that he was to immediately return to work at his duty station. He left his position at the [REDACTED] and he returned to the Coast Guard. He stated that he was immediately assigned menial tasks.

Additional Correspondence from the Applicant

On May 2, 1997, the applicant submitted a letter to the BCMR. He stated that the letter was intended to "supplement [his] original request for relief."

The applicant stated that the "foundation of [his] argument is breach [sic] of contract." He stated that he felt he "was entitled to separation pay because [his]

acknowledged that the CO did not recommend him for reenlistment, and that the CO's reasons for that determination were "well documented in Applicant's Service Record." The Chief Counsel asserted that the applicant was therefore ineligible for reenlistment, "despite the CFTRR board results."

The Chief Counsel asserted that a "reenlistment recommendation is committed to the discretion of the Commanding Officer [CO]." At the time the applicant submitted his CFTRR application through the chain of command, his CO was not available. The Acting CO endorsed the application and recommended the applicant for reenlistment. The Chief Counsel stated that while the Acting CO may have "had a higher opinion of [the applicant's] potential for service," his recommendation had no bearing on the final decision made by the CO to not recommend the applicant's reenlistment.

The Chief Counsel stated that because the applicant did not extend or reenlist within the 60-day period following CFTRR, he lost that option. The Chief Counsel stated that when the applicant's opportunity under CFTRR lapsed, his command had to refer to the provisions of the Personnel Manual in effect at the time of the applicant's expiration of enlistment.

The Chief Counsel also stated that the fact that the applicant's command neglected to promptly notify him of his CFTRR results was not the cause of the applicant's inability to reenlist. The Chief Counsel stated that the applicant had not proven that "but for the command's delay in notifying him of the CFTRR results, he would have been allowed to reenlist." The Chief Counsel asserted that the applicant's CO is "accorded a strong, though rebuttable, presumption that he performed his duties correctly, lawfully and in good faith." The Chief Counsel stated that "[w]hile the applicant may have had a different view of his own performance than his supervisors had, and feels he was unfairly labeled and treated as a performance problem, he has not shown that any of the Coast Guard's actions amounted to an error or injustice, much less that those actions entitle him to separation pay."

The Chief Counsel stated that "there is no reason to believe that the Coast Guard's refusal to allow Applicant to reenlist caused him to request early separation." The Chief Counsel asserted that it was evident from a letter in the applicant's record that his request for early separation was based on his "distaste for his job and his rate."

Applicant's Response

On November 5, 1997, the applicant asked the Board for a nine-day extension of time in which to respond to the views of the Coast Guard.

On November 14, 1997, the applicant submitted his response. He stated that the Coast Guard "failed to acknowledge their responsibility in giving [him] the proper counseling in regards [sic] to [his] Coast Guard reenlistment." He stated that he was unable to make an "informed decision" because he was not counseled on his options of reenlistment, and was not given the necessary information regarding reenlistment and the CFTRR.

The applicant stated that he conducted some research on his case and found that the Coast Guard neglected to follow certain provisions of the Personnel Manual in the process of denying his reenlistment. He stated that he was never given a reenlistment interview, as required by Article 12-B-12 of the Personnel Manual. He also stated that his record does not contain an administrative remarks (page 7) entry indicating that he received a reenlistment interview. The applicant asserted that this was contrary to the requirements of Article 12-B-14 of the Personnel Manual.

The applicant also alleged that the Coast Guard neglected to follow the proper regulations when he extended his enlistment after missing the CFTRR deadline. He stated that instead of following the provisions of Article 12-B-16 and 12-B-5 of the Personnel Manual, the Coast Guard followed Article 1-G-31. The applicant stated that due to the Coast Guard's failure to follow the provisions of Articles 12-B-5 and 12-B-16, he was "never counseled . . . concerning [his] particular situation."

The applicant stated that when he wrote the letter to the Coast Guard requesting early release, he did so while he was in the mental ward of the Veteran's Hospital. He stated that he was so disheartened as a result of the treatment he was receiving from his supervisors that he decided to leave the Service altogether. He stated that the letter was not intended to signify a dislike for his job.

Response of the Coast Guard

On November 26, 1997, the Chief Counsel of the Coast Guard submitted his comments addressing the applicant's response.

The Coast Guard stated that "[a]s we stated previously, Applicant's decision to request early separation, rather than serving out his previously obligated service, is dispositive of the issue of separation pay."

However, the Chief Counsel stated that one point of its advisory opinion, regarding Article 12-B-5 of the Personnel Manual, required clarification. The Chief Counsel stated that "[w]hile Applicant's Commanding Officer clearly communicated to Applicant that he was disinclined to recommend him for reenlistment, he never apparently withdrew the command's reenlistment recommendation," which is required under Article 12-B-5 of the Personnel Manual.

The Chief Counsel stated that Article 12-B-5 requires a command to follow "certain procedures" when it "determines that a member with eight or more years' service is ineligible to reenlist." The Chief Counsel stated that the purpose of that provision is to provide a member who has served for eight or more years "an opportunity to be heard and to present evidence before the Coast Guard makes a decision regarding termination of a substantial military career."

The Chief Counsel asserted that the applicant was "never ineligible to reenlist because the command never withdrew the recommendation that it had made previously." However, the Chief Counsel stated that the applicant's "decision to extend his enlistment delayed the necessity for any decision regarding his eligibility to reenlist," and the applicant's "request for voluntary separation made it unnecessary [for his command] to revisit the issue when [the applicant] was discharged."

SUMMARY OF RECORD AND SUBMISSIONS

The applicant's record shows that between November 1992 and March 1996, the applicant received 12 notices in his military record, in the form of page 7 entries and letters, which address his poor performance as a yeoman at his duty station, his financial problems, and his failure to obtain authorization to be away from work.

On July 11, 1995, the applicant was admitted to a mental health center to be treated for severe depression and suicidal ideation. He was released from the center on July 24, 1995. While he was in the hospital, the applicant wrote a letter to his CO expressing that "[t]here is one matter I do hope to convince you of, and I hope it will be clear to see." He stated that he had "given an honest effort in trying to function as a productive yeoman," but he "can't stand sitting for eight hours at a time looking at a computer screen" The applicant asked the CO ensure that "[his] probation be terminated as soon as possible, and release [him] from further torture." The applicant continued, saying:

"I really am not yeoman material. I already feel the dread of returning to that place in any fashion. I'm really tired of it all."

On August 3, 1995, the psychologist who was handling the applicant's case completed a psychological assessment of the applicant. The psychologist determined that the applicant suffered from severe depression and anxiety. She also found that the applicant had antisocial tendencies. She advised the applicant to continue with individual therapy. She also recommended continued monitoring of the applicant's suicidal ideation, and treating symptoms of depression and anxiety with medication.

On August 16, 1995, a clinical nurse specialist who had been treating the

applicant submitted a letter to the applicant's CO in which she recommended that the applicant be "released from his obligation to the U.S. Coast Guard and continue an active therapy treatment program" at the mental health clinic. She based her recommendation on the applicant's continued suffering from "major depression and panic attacks which seem to be aggravated by his present work situation."

She stated that after the applicant was released from the mental health center and allowed to return to active duty, the "symptoms of his illness recurred after one week back on the job." The nurse specialist stated that she "advised him to take a [week] of leave . . . until he could get his emotions under control." The nurse stated that she also "offered to rehospitalize [the applicant], if necessary, to protect him and others from suicidal and aggressive ideation."

The applicant's record shows that on September 1, 1995, the applicant's CO advised the applicant that he was being processed for discharge. In paragraph (a) of the letter, the CO stated as follows:

(a) The reasons for my action are:

(1) Since 1993 you [the applicant] have been unable to satisfactorily perform the duties assigned to you within the yeoman rating. During this two year period, you have been counseled on several occasions regarding job performance and also placed on performance probation. Despite your best efforts your job performance can, at best, be described as marginal

The CO also noted that he was discharging the applicant before the end of his extension of enlistment due to the applicant's request for immediate separation dated July 23, 1995, the applicant's psychological assessment, and the recommendation of the clinical nurse who had treated the applicant. The CO stated that the applicant's "psychotherapist [had] recommended that [the applicant] be released from the Coast Guard, due in part to the stress and anxiety that [he had] experienced as the result of [his] working environment, and the frustration [he had] experienced by [his] inability to perform yeoman related work."

The CO advised the applicant that he had a right to submit a statement on his behalf, that he could disagree with the recommendation for discharge and submit a rebuttal in writing, and that he had a right to present his case and appear in person before an administrative discharge board.

On September 1, 1995, the applicant submitted his endorsement of the CO's recommendation for discharge. In the endorsement, the applicant stated that he acknowledged notification of his discharge, waived his right to submit a statement, and did not object to being discharged from the Coast Guard.

The applicant's record shows that on September 7, 1995, he submitted a letter to the Commander of Military Personnel Command (now CGPC) which was his "conditional waiver of a hearing before an administrative discharge board." In the letter, the applicant stated that he understood he was being recommended for discharge for convenience of the government. He stated that he wished to "waive [his] right to a hearing before an administrative discharge board provided the Commandant authorizes an honorable discharge in [his] case, and [he] receive[s] at least 1/2 separation pay." The applicant closed the letter stating that he "voluntarily [signs] this statement of [his] own free will having been counseled by legally qualified counsel" The letter was signed by the applicant and witnessed by his legal counsel and a separate witness.

The CO had requested authority to discharge the applicant for the convenience of the government, and without evaluation by a medical board prior to discharge. On October 3, 1995, the Commandant asked the CO to have a medical evaluation board (MEB) review the applicant's condition and determine the nature of his discharge.

On November 21, 1995, an MEB was convened, and it reviewed the applicant's medical history. The MEB determined that the applicant suffered from an "Adjustment Disorder, unspecified, as manifested by the development of irritability and noncardiac chest pain in response to ongoing difficulties with supervisor." The MEB also determined that the applicant had "marital and occupational problems."

The applicant's record shows that his extension of enlistment was scheduled to end on April 28, 1997. His request for early release resulted in a change of his termination of enlistment date. He was therefore scheduled for early release on May 1, 1996.

RELEVANT REGULATIONS

Centralized First Term Reenlistment Review (CFTRR)

Commandant Notice 1910, dated February 21, 1995, addressed "Centralized First Term Reenlistment Review."

Paragraph 7.f(8) of the Notice stated that commanding officers are responsible for ensuring that "members are promptly notified of CFTRR actions." Paragraph 7g.(1) stated that members were responsible for ensuring that they have read the Notice and had their questions answered regarding their reenlistment eligibility criteria.

Paragraph 6.f. stated that CGPC would publish the CFTRR results, and members had 60 days to notify their personnel units of whether or not they would

reenlist under the provisions of the CFTRR.

On December 12, 1994, an announcement (ALMPC 014/94) was released to personnel units which listed the CFTRR results. Paragraph 2 of ALMPC 014/94 stated that "[m]embers must obligate service for a minimum period of 3 years within 60 days after [the date of the announcement]. Members may reenl[ist] or sign an agreement to extend a current enlistment to meet this requirement." The applicant's name appeared on the list of those members who passed CFTRR.

Paragraph 2 of ALMPC 014/94 also provided that "[i]f appropriate, CO's should **withhold or cancel reenlistment or extension of ineligible personnel** per [Personnel Manual, section 1-G-5]." (Emphasis added.)

Coast Guard Personnel Manual

Article 1-G-5.c. of the Coast Guard Personnel Manual (COMDTINST M1000.6A, Change 16), states that in order for a member to be eligible for reenlistment, the member must be recommended for reenlistment by the officer effecting discharge. In the applicant's case, the officer effecting discharge was his CO.

Article 12-B-4 of the Coast Guard Personnel Manual (COMDTINST M1000.6A, Change 13) addresses "Predischage Interview of Enlisted Personnel." It states the following, in part:

a. General. In general, a member who meets the standards for reenlistment set forth in article 1-G-5 should be eligible for reenlistment, except . . . when not recommended by the commanding officer.

Article 12-B-4b.(1) addresses the initial discharge interview of a member. The Article states, in part:

b.(1) The commanding officer, based on the individual's record and the guidelines of [this Article] shall advise each member approximately 6 months prior to the expiration of enlistment as to whether or not that member is eligible for reenlistment. A member who is not eligible for reenlistment shall be fully informed as to the reasons therefore, assigned the proper code, and . . . processed in accordance with article 12-B-5. . . . In accordance with article 12-B-5a., this notification of an individual's ineligibility for reenlistment may be shorter than 6 months."

Article 12-B-4.d(5) states that if a member is "not eligible for reenlistment the member shall be informed as to the reason for the determination and shall be

required to sign a statement on [a page 7 entry] . . . as having been so informed."

Article 12-B-5 states the following, in part:

Processing Procedures for Personnel Not Eligible for Reenlistment

a. If at the time of initial predischage interview conducted in according with article 12-B-4b. or at any time subsequent thereto, a commanding officer determines that an enlisted member is not eligible for reenlistment, the procedures of this article shall apply.

* * * * *

c. A member with 8 or more years of total active and/or Reserve military service shall be notified, in writing, of the determination and will be required to acknowledge receipt of this information by signature on a copy thereof. A CG-3307, Administrative Remarks [page 7 entry], shall be made in the member's Personnel Data Record to the effect that this procedure has been initiated. (Emphasis in original)

Article 12-B-5 required the commanding officer to advise the member of his right to appeal the determination of reenlistment ineligibility before a reenlistment board. The member had a right to waive the reenlistment board review, after which, he would be recommended for discharge.

Voluntary Early Release Program (VERP)

On October 30, 1995, ALCOAST 102/95 was published.³ ALCOAST 102/95 presented the criteria for release of enlisted personnel, rate E-4 and above, under the VERP. Paragraph 2 of the ALCOAST stated that "[r]equests for voluntary early release will be considered based on rating, pay grade impacts, personal desires of the member, available reliefs [sic], and needs of the service." Paragraph 7 of the ALCOAST stated that "[m]embers separated under this voluntary early release are not entitled to separation pay."

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, United States Code. The application was timely.

³ An ALCOAST is a broadcast message distributed to all Coast Guard personnel.

2. The applicant asked the Board to grant him "full separation pay for 11 years of active service." The applicant alleged that his CO blocked his reenlistment, placed him on unwarranted performance probation, and forced him to extend his enlistment for a two year term. He asserted that he had been approved for reenlistment under the CFTRR process, but was denied reenlistment by his CO. The applicant alleged that he should have received separation pay for his period of service, but was improperly denied it.

3. The applicant submitted his CFTRR review packet through his command at a time when his CO was away from the duty station. Therefore, the packet was endorsed by the Acting CO. The Acting CO recommended the applicant for reenlistment. It was not improper for the Acting CO to endorse the applicant's packet.

4. The applicant has misunderstood the significance of the CFTRR results. Passing the CFTRR did not guarantee that he would be reenlisted. According to paragraph 2 of ALMPC 014/94, COs retained authority, under Article 1-G-5.c. of the Personnel Manual, to withhold or cancel reenlistment or extension of ineligible personnel, regardless of whether the personnel "passed" the CFTRR.

The CO determined that due to poor performance, the applicant was ineligible for reenlistment. The CO was authorized to make that determination under Article 1-G-5 of the Personnel Manual. The CO did not abuse his discretion, or act arbitrarily, when he denied the applicant reenlistment after he had passed the CFTRR.

5. The applicant alleged that the CO failed to follow provisions of Article 12-B-5 of the Personnel Manual when he denied the applicant reenlistment.

While there is no evidence in the record that the CO complied with the provisions of Article 12-B-5 in not recommending the applicant for reenlistment, the Board finds that the effect of this omission is de minimis. The applicant's CO could have easily corrected the error by completing the page-7 entry, giving it to the applicant to review, and placing it in the applicant's military record. After completion of the page 7, the CO would have requested authority to discharge the applicant. He did not. Instead, the CO recognized the applicant's strong desire to remain in the Service on active duty and allowed him to extend his enlistment for two years. The CO explained to the applicant that he would be placed on performance probation for 6 months during the extension in order to improve his performance. Essentially, the extension was granted in an effort to allow the applicant to remain in the Coast Guard, improve his performance, and increase his chances of retention.

6. The applicant alleged that his CO treated him unfairly and constantly

assigned him "menial" tasks. The work the applicant described as "menial" involved filing, letter drafting, form letter completion, and various administrative tasks to assist another division of the department. He asserted that the unfair treatment from the CO was instrumental in his inability to perform his duties.

The yeoman rating, which the applicant held, "comprises clerical and verbal aptitudes; filing, typing, and stenographic skills, and a knowledge of correspondence, reports, forms and procedures." Article 2-B-1.a, Coast Guard Personnel Manual. The applicant has not shown that the tasks he was responsible for were in excess of, or different from, the responsibilities of yeomen. He also has not shown that the treatment he received from his CO differed from the CO's treatment of other yeoman at his duty station. It is evident from the applicant's statements that the menial tasks that he resented being responsible for were the common duties of a 3rd class yeoman.

7. The applicant's record shows that he had difficulty completing the tasks required of his rate. Ultimately, he expressed his dislike of his position in the letter he wrote to his CO, dated July 23, 1995, in which he said he could not stand staring at a computer screen for eight hours a day and that he was not "yeoman material." The applicant's statements and actions suggest that what he perceived as unfair treatment was merely a manifestation of his dislike of his job.

8. The applicant was hospitalized for a 14-day period in July, 1995. During that time, he was diagnosed as suffering from severe depression, anxiety, and suicidal ideation. The clinical nurse who treated the applicant determined that his condition was attributed to problems he had with his supervisor, and his job in general. She recommended that he not be retained on active duty. Another psychologist who evaluated the applicant observed that he suffered from anxiety and depression, and that he would benefit from further therapy. It was also determined that his condition constituted a social impairment that would make his job performance difficult. Ultimately, these diagnoses lead the applicant's CO to the conclusion that the applicant should not be retained on active duty in the Coast Guard.

9. In a letter dated July 23, 1995, the applicant asked his CO to cancel his extension of enlistment and grant him early release from the Service. At the time of his request, the applicant's scheduled termination of enlistment was April 28, 1997. The applicant's CO informed him by letter dated September 1, 1995, that he was recommending the applicant for discharge. The applicant acknowledged the CO's recommendation, and declined to submit a statement on his behalf. On September 7, 1995, the applicant submitted a letter to the Commander of CGPC which stated that he wanted to waive his right to an Administrative Discharge Board hearing. He stated that he waived that right on the condition that he receive an honorable discharge and 1/2 separation pay. There is no evidence in the

applicant's record that the Commander of CGPC informed the applicant that his conditions would be met at the time of his discharge.

The CO had the discretion to decide whether or not retention of the applicant on active duty would be in the best interests of the Service.

10. The Commandant approved early release of the applicant under the Voluntary Early Release Program (VERP). The applicant met the criteria of the VERP. He was an E-4 and was requesting release before the termination of his enlistment. Paragraph 10 of the VERP provided that members were to be discharged in accordance with Article 12-B-12 of the Personnel Manual. The applicant's DD Form 214 shows that he was discharged on May 1, 1996.

11. The applicant claimed that he should have received separation pay in compensation for his 11 years of military service. He asserted that a co-worker who also served under the CO, and allegedly suffered under the same work conditions as the applicant, had applied to the BCMR an award of separation pay through correction of his record. The applicant stated that in his co-worker's case, the Board granted the requested relief.

12. The case the applicant is referring to, BCMR Docket No. 161-94, is distinguished from the applicant's case because the member in Docket No. 161-94 was discharged at the scheduled termination of his enlistment. He had served his complete term. Accordingly, he should have received separation pay for his period of service. In Docket No. 161-94, the Board found that the Coast Guard had erred in failing to award the member separation pay when he was discharged from the Service.

The applicant did not serve on active duty to the scheduled termination of his enlistment (April 28, 1997.) He requested early separation, and was therefore separated under the VERP. Under the VERP, the applicant was ineligible for separation pay. See ALCOAST 102/95, paragraph 7. Therefore, he was not given separation pay at the time of his discharge. Had he remained in the Service until the scheduled termination of his enlistment, the applicant would have been entitled to separation pay appropriate for his years of service.

13. The applicant has not shown that he was unaware of the VERP provisions. He has not alleged that the Coast Guard promised him separation pay notwithstanding the VERP provisions. There is no evidence in the record, or in the applicant's submissions, to support his contention that he should have received full separation pay.

14. The applicant also alleged that his CO discharged him under Article 1-B-31 of the Personnel Manual. However, as stated above, the applicant was

discharged under Article 12-B-12 of the Personnel Manual. That Article is listed in block 25 (Separation Authority), of his Certificate of Release or Discharge from Active Duty (DD Form 214). There is no evidence that the applicant was released under the authority of Article 1-B-31. Article 12-B-12 was the applicable separation provision in the applicant's discharge.

15. The applicant has not shown that the Coast Guard committed an error in his record, or that he suffered an injustice. The applicant's record, and his submissions, show that he was discharged due to poor performance over an extended time period. There is no evidence of bias or abuse of discretion by the applicant's CO. The applicant's CO followed correct procedure in discharging the applicant.

There is no basis for the Board to correct the applicant's military record to allow payment of separation pay. He voluntarily requested early release from the Coast Guard, and was properly released under the VERP. The provisions of the VERP prohibited award of separation pay.

16. The applicant submitted insufficient evidence to sustain his allegation that he was released on annual leave to begin work with the [REDACTED] and then ordered back to active duty. Other allegations raised by the applicant and not addressed in the findings were considered by the Board and deemed to be without merit.

17. Accordingly, the application should be denied.

ORDER

The application for correction of the military record of former [REDACTED]
[REDACTED] USCG, is denied.

