


**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 1998-042

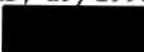
FINAL DECISION

 Chairman:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on December 17, 1997, upon the receipt by the BCMR of the applicant's request for correction of his military record.

The final decision, dated October 22, 1998, was signed by three duly appointed members who were designated to serve as the Board in this case.

APPLICATION FOR RELIEF

The applicant is a machinist's technician first class (MK1; pay grade E6.). He asked the Board to direct the Coast Guard to pay him career sea pay (CSEAPAY) for the period from February 19, 1992 through October 1, 1994 when he was on board the 65-foot cutter, USCGC .

The applicant stated that members aboard 65-foot cutters are "now" entitled to SEAPAY, effective October 30, 1996. He argued that he and a great majority of his fellow sailors were under the belief from 2/92 to 10/94 that any person serving duty aboard a 65-foot cutter was entitled to sea time/pay. He feels "that sailors who have previously served aboard 65-foot cutters should be rewarded." If a member is fortunate enough to be on a 65-foot cutter on October 30, 1996, he receives sea pay and cumulative sea time. If not, the time aboard the ship only counted towards [a] sea service ribbon, cutterman's pin and for advancement."

VIEWS OF THE COAST GUARD

On January 26, 1998, the Chief Counsel of the Coast Guard submitted an advisory opinion with respect to all pending applications for sea pay. The Chief Counsel recommended denial of relief in all such cases on the ground that relief would

be a violation of 37 U.S.C. 305a(c) and Executive Order 11157 § 203 as amended, and 49 CFR. § 1.45. These provisions delegated to the Commandant the authority to provide for career sea pay.

On October 30, 1996, the Commandant issued ALDIST 158/96, a message providing sea pay for members serving on 65 foot cutters. The ALDIST stated that it is effective on that date "and is not retroactive . . . for the purpose of accumulated sea time." (The applicant served at sea on a 65-foot cutter until October 1994.)

On April 20, 1998, the Chief Counsel submitted a second advisory opinion and enclosed the January advisory opinion. The Chief Counsel said the applicant requested retroactive application when the Commandant had determined there was to be no retroactive application.

RESPONSE OF THE APPLICANT

Copies of the advisory opinions were sent to the applicant with an invitation to submit a response to the Board if he disagreed with the Coast Guard views. The Board did not receive any response from him.

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction to determine the issues in this proceeding under section 1552(b) of title 10, United States Code.
2. The applicant requested an oral hearing. The Chairman evaluated the request under §52.31 of the Board's rules and recommended that the Board dispose of the merits without a hearing. The Board agreed with that recommendation. ..
3. The applicant alleged that he served approximately two and 1/2 years aboard the cutter [REDACTED] (2/19/92 to 10/1/94). The applicant alleged that he did not receive Sea Pay for this period. He feels that he deserves credit toward cumulative sea time.
4. Career Sea Pay for 65-foot cutter personnel was authorized by ALDIST 158/96, on October 30, 1996. The applicant was not eligible to receive sea pay under that ALDIST because he left sea duty on October 1, 1994, and the ALDIST bars retroactivity.

5. The applicant has not introduced any evidence to the effect that the Coast Guard misled or counseled him into believing that SEAPAY was available prior to October 30, 1996.

6. The applicant has not shown that the Coast Guard committed an error or injustice with respect to the payment for seapay. Accordingly, the application should be denied.

[ORDER AND SIGNATURE ON FOLLOWING PAGE]

ORDER

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

