

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

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 1998-056

FINAL DECISION

██████████ Chairman:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on February 6, 1998, upon the Board's receipt of the applicant's application for correction.

The final decision, dated December 17, 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 ██████████ (pay grade E-6), asked the Board to correct his military record to show that he was eligible to receive sea pay from the time he reported aboard the CGC ██████████ on September 30, 1993, until May 29, 1995, the day he left her. The CGC ██████████ was a 65-foot cutter.

The applicant alleged that he was eligible to receive sea pay for this 20-month period because the Commandant determined, on October 30, 1996, that members serving aboard 65-foot cutters "met the provisions of current legislation for career sea pay/time." The applicant said that the award of back sea pay "would be just" because the roles and missions of the CGC ██████████ did not change between the 20 months of the applicant's tour on the ██████████ and October 30, 1996, the date of the Commandant's determination.

The applicant said that he was assigned to the CGC ██████████ for one year and eight months, with no sea pay/sea time compensation. He said he was not entitled to sea pay and sea time until October 30, 1996.

VIEWS OF THE COAST GUARD

On January 26, 1998 and March 13, 1998, the Chief Counsel of the Coast Guard submitted two advisory opinions. Both opinions recommended that relief be denied.

Advisory Opinion for All Sea-Pay Cases

The January 26, 1998 advisory opinion commented on all the sea pay cases pending before the Board in which the applicants claimed they were eligible for sea pay because they had served on 65-foot cutters. (The March 13, 1998 advisory opinion, pertains to BCMR 1998-056 only.)

The Chief Counsel said that none of these applicants indicated that their records were erroneous. They all asked instead that their records be corrected to show they were eligible for sea pay. The Chief Counsel stated that none of them were eligible for sea pay because (1) the BCMR lacks jurisdiction to provide such relief¹ and (2) the applicants have not proved they suffered an error or injustice.

The Chief Counsel also said that sea pay was for persons aboard "ships." Ships were 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." Prior to October 30, 1996, the Commandant defined "ships," for purposes of career sea pay, as vessels equipped with such facilities.

According to the Chief Counsel, on October 30, 1996, the Commandant issued an ALDIST with new regulations for sea pay for 65-foot cutters. It provided that the new regulations are "effective on 30 Oct 96 and [are] not retroactive before that date . . . for the purpose of pay or accumulated sea time." The Chief Counsel explained that such new regulations do not render previous interpretations or regulations erroneous or unjust "particularly when they are explicitly made non-retroactive." ALDIST 249/96. The Chief Counsel stated that under ALDIST 249/96 "[n]o retroactive payments are warranted."

Advisory Opinion for BCMR 1998-056

The Chief Counsel issued an advisory opinion targeted specifically at BCMR 1998-056. On March 13, 1998, he recommended denial of relief in this case, for the reasons set forth in the January 26 advisory opinion.

¹ Until recently, section 3702 of title 31, U.S. Code, provided that the Comptroller General (GAO) "shall settle all claims of or against the United States Government." Section 3702 was amended in 1997 by substituting "Secretary of Defense" for "Comptroller General." Section 3702(a)(1)(A) now directs the Secretary of Defense to [settle claims]involving uniformed service members' pay, allowances. . .

RESPONSE OF THE APPLICANT TO THE VIEW OF THE COAST GUARD

On March 16, 1998, a copy of the advisory opinion was sent to the applicant with an invitation to him to submit a response if he disagrees with the Coast Guard views.

The Board received a response from the applicant, on March 31, 1998. He stated that the Commandant had determined, on October 30, 1996, "that 65 foot cutters should be eligible for sea pay." The applicant argued that he should have been entitled to sea pay, while he served on the [REDACTED] in 1993-1995, because the mission and nature of 65 foot cutters was the same on October 30, 1996.

APPLICABLE REGULATIONS

ALDIST 249/96: The following paragraphs are taken from this ALDIST:

"1. On 30 OCT 96, the Commandant determined that members serving on 65-foot cutters met the provisions of current legislation and executive orders and are therefore eligible for continuous career sea pay/time.

"2. This determination is effective on 30 OCT 96 and is not retroactive before that date for administrative purposes or for the purposes of pay or accumulated sea time."

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 pursuant to section 1552 of title 10, United States Code. The application was timely.
2. The applicant alleged that he did not receive sea pay for the period from September 30, 1993 to May 29, 1995 (i.e. the period prior to October 30, 1996.) He alleged that the Coast Guard was unjust in this respect.
3. Section 305a(c) of title 37, United States Code, provides that the members of uniformed services are entitled to career sea pay under regulations issued by the President. The power to prescribe 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." Prior to this ALDIST, sea pay was defined as pay for service on a ship which was defined as a vessel with "berthing and messing facilities." The vessel to which the applicant was assigned was not so equipped and so was not entitled to sea pay.

5. The applicant has not introduced any evidence to the effect that the Coast Guard led him to believe that sea pay was available under ALDIST 249/96 prior to the effective date of the ALDIST.

6. The Chief Counsel asserted that the Board lacks jurisdiction to consider this application on the ground that the Comptroller General [now Secretary of Defense] 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 that the time he spent on a particular vessel be reflected as sea duty for all purposes, including pay.

7. The application should be denied on the ground that the Commandant, in ALDIST 249/96, did not authorize retroactive payment for sea pay. The Coast Guard committed no error or injustice.

ORDER AND SIGNATURES ON FOLLOWING PAGE

ORDER

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

USCG, for correction of

