

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

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 1999-128

FINAL DECISION

[REDACTED] Chairman:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14, United States Code. It was commenced on June 2, 1999, upon the Board's receipt of the applicant's application for correction.

The final decision, dated March 30, 2000, 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 chief **[REDACTED]** pay grade E-7), asked the Board to correct his military record to show that he was eligible to receive career sea pay from the time he reported aboard the CGC **[REDACTED]** on June 28, 1994, until May 2, 1995. He alleged that he was eligible for sea pay pursuant to Change 12 to the Coast Guard Pay Manual because the CGC **[REDACTED]** was a 65-foot cutter and Change 12, which was effective June 28, 1994, added 65-foot cutters as career sea pay eligible vessels.

The applicant said that he was eligible to receive sea pay for this 10-month 5-day pay 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 roles and missions of the CGC **[REDACTED]** did not change between the 10 months 5 days of the applicant's tour and October 30, 1996, the date of the Commandant's determination (ALDIST 249/96).

VIEWS OF THE COAST GUARD

On February 11, 2000, the Chief Counsel of the Coast Guard submitted an advisory opinion to the Board recommending that relief be denied in this matter.

The Chief Counsel summarized the conclusion of the advisory opinion as follows: "Change 12 to the CG Pay Manual did not establish the authority to pay members serving on 65' cutters continuous career sea pay/time. It was only upon the promulgation of ALDIST 249/96 in November 1996 that the Commandant authorized continuous career sea pay/time to CG members serving on 65-foot cutters.

The Chief Counsel also said that the Board does not have jurisdiction to award the requested relief. The applicant seeks career sea pay for the period from June 28, 1994 through May 2, 1995, which is, according to the Chief Counsel, a claim against the United States. In 1996, claims against the United States were required to be settled by the Comptroller General of the United States. 10 U.S.C. § 3702. According to the 1996 amendments to that statute, the authority of the Comptroller General was transferred to that of the Secretary of Defense as to "claims involving uniformed service members' pay, allowances"

The Chief Counsel argued that the BCMR statute does not grant the Secretary the authority to grant or withhold monetary benefits. The Chief Counsel said that it might be an unconstitutional delegation of legislative authority to interpret the BCMR statute to give the Secretary such authority.

The Chief Counsel said that ALDIST 249/96, which was promulgated on November 20, 1996, was the first directive that authorized career sea pay to members assigned to 65' cutters. According to the Chief Counsel, on October 30, 1996, the Commandant issued the 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. The Chief Counsel stated that under ALDIST 249/96 "[n]o retroactive payments are warranted."

RESPONSE OF THE APPLICANT TO THE VIEW OF THE COAST GUARD

On February 14, 2000, 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 7, 2000. He stated that he has "no objection to the Coast Guard recommendation."

APPLICABLE REGULATIONS

ALDIST 249/96:

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 should have received sea pay for the period from June 28, 1994 to May 2, 1995, because Change 12 to the Coast Guard Pay Manual added 65-foot cutters to the category of career sea pay eligible vessels, effective June 28, 1994. Change 12, however, did not authorize sea pay to members on career sea pay eligible vessels.
3. The applicant alleged that the decision of the Coast Guard was unjust in denying him sea pay for that period because the roles and missions of his vessel did not change between the dates of the applicant's tour and October 30, 1996, the date of the Commandant's determination to authorize sea pay to CG members serving on 65' cutters.
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 led him to believe that sea pay was available prior to the effective date of ALDIST.249/96 on October 30, 1996.
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, but not limited to, pay, allowances, travel and transportation.

7. Accordingly, 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] USCG, for correction of his military record is denied.

