

**DEPARTMENT OF HOMELAND SECURITY  
BOARD FOR CORRECTION OF MILITARY RECORDS**

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2015-138**

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**FINAL DECISION**

This is a proceeding under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case upon receipt of the applicant's completed application on June 30, 2015, and assigned it to staff member [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated December 18, 2015, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT'S REQUEST AND ALLEGATIONS**

The applicant, a former [REDACTED] asked the Board to correct his record to reflect that he is eligible for separation pay and to have the Coast Guard Personnel and Pay Center and the Finance Center take any necessary actions to provide him separation pay.

The applicant alleged that the Coast Guard erred in its application of its regulations and policy by failing to award him separation pay when he was separated from active duty on May 15, 2015. The applicant stated that the Coast Guard denied him separation pay after incorrectly asserting that he did not have at least six years of continuous active service. The applicant alleged that on May 15, 2015, he had in fact been on active duty since March 16, 2009, which is more than the minimum requirement of six continuous years.

In support of his allegations, the applicant submitted a memorandum signed by a senior chief yeoman on October 28, 2014, which states that the applicant "has served continuously in the active component of the United States Coast Guard with no break in service or loss of pay since 23 March 2002." The applicant also submitted a Statement of Creditable Service, which shows the following:

- The applicant enlisted on active duty in the Coast Guard on May 15, 2001.



- As an enlisted member, he successfully completed Officer Candidate School, was appointed a lieutenant junior grade in the Reserve, and began serving on an extended active duty contract on November 12, 2003.
- While serving on extended active duty, the applicant was promoted to lieutenant and integrated from the Reserve into the regular Coast Guard on April 17, 2007.
- On August 27, 2008, the applicant separated from the regular Coast Guard under the Temporary Separation Program and became a Reserve officer again.
- However, he was immediately recalled to active duty as a Reserve officer from August 28 to 31, 2008, to assist with hurricane response operations.
- From January 4 to 24, 2009, the applicant served on active duty in support of the presidential inauguration.
- From March 16 to July 5, 2009, the applicant served on active duty at the [REDACTED] as a Reserve officer.
- On July 6, 2009, the applicant returned to the regular, active duty Coast Guard because his Temporary Separation had ended.
- The applicant continued serving on active duty in the regular Coast Guard until his separation on May 15, 2015.

The applicant also submitted the following:

- A copy of the orders by which he was ordered to serve on active duty at the [REDACTED] from March 16 to July 5, 2009.
- A copy of orders, dated June 18, 2009, directing him to proceed and report for duty at a new unit in [REDACTED] by August 1, 2009.
- A memorandum from the Personnel Service Center (PSC) dated July 2, 2009, which recalled the applicant regular commissioned officer on or about July 6, 2009, and advised him to “coordinate a firm reporting date” with his new unit in [REDACTED]

### VIEWS OF THE COAST GUARD

On October 19, 2015, the Judge Advocate General (JAG) submitted an advisory opinion in which he recommended that the Board grant alternative relief. In so doing, he adopted the findings and analysis provided in a memorandum on the case prepared by PSC.

PSC explained that the applicant was twice non-selected for promotion to [REDACTED] [REDACTED] which made him a candidate for mandatory separation on June 30, 2015, per 14 U.S.C. § 283(1). The Coast Guard notified the applicant that he was not entitled to separation pay because he would not have completed six years of continuous active service by June 30, 2015. PSC stated that the applicant would not have six years of continuous active service because his active duty orders to the [REDACTED] ended on July 5, 2009, and although the July 2, 2009, memorandum recalled him to the regular Coast Guard on or about July 6, 2009, the applicant did not actually report for duty and sign his Acceptance and Oath of Office form in [REDACTED] until July 9, 2009. (The Coast Guard submitted a copy of this form, which shows that it was signed in [REDACTED] on July 9, 2009.) Therefore, PSC argued, the applicant had a three-day break in service (July 6, 7, and 8, 2009) and would not have six continuous years of active duty by June 30, 2015.



PSC stated that the three-day break in service may have been caused by the applicant's travel time between the [REDACTED] or it might have been caused by an administrative delay at his unit. PSC noted that if the applicant had signed the Acceptance and Oath of Office form on July 6, 2009, he would have no break in service and would be eligible for separation pay.

PSC acknowledged that the applicant has suffered an injustice and, in the interest of justice and equity, should be made eligible for separation pay. Therefore, PSC recommended that the Board correct the applicant's record to show that he signed his Acceptance and Oath of Office on July 6, 2009, so that he will have no break in service and be entitled to separation pay.

### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On October 20, 2015, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond in writing within thirty days. The applicant responded by stating he did not object to the Coast Guard advisory opinion, but pointed out that under Coast Guard policy, a member has five days to take the oath once reporting to active duty and the applicant reported as directed to take the Oath of Office en route to [REDACTED] after working out the reporting date with the administrative office at his new unit. The applicant stated that he was on official travel and never actually left active duty.

### **APPLICABLE LAW**

Under 14 U.S.C. § 283, a lieutenant in the Regular Coast Guard who has twice failed of selection for promotion shall be honorably discharged on the next June 30<sup>th</sup> or, at his request, on an earlier date with no loss of benefits.

Under 14 U.S.C. § 286(b), "[a]n officer of the Regular Coast Guard who is discharged under this section or section 282, 283, or 284 of this title and has completed 6 or more, but less than 20, continuous years of active service immediately before that discharge or release is entitled to separation pay computed under subsection (d)(1) of section 1174 of title 10."

Under 10 U.S.C. § 1174(d)(1), the amount of separation pay the officer receives is "10 percent of the product of (A) his years of active service, and (B) 12 times the monthly basic pay to which he was entitled at the time of his discharge or release from active duty.

### **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 10 U.S.C. § 1552. The application was timely filed within three years of the applicant's separation on May 15, 2015.



2. The applicant alleged that the Coast Guard's determination that he is not entitled to separation pay is erroneous and unjust because he had served on active duty since March 16, 2009, when he was discharged on May 15, 2015, which is more than six continuous years. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.<sup>1</sup> Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."<sup>2</sup>

3. The record shows that as a Reserve officer, the applicant served on active duty at the [REDACTED] continuously from March 16 to July 5, 2009. While at the [REDACTED] on June 18, 2009, he received travel orders to proceed and report for duty in [REDACTED] by August 1, 2009. On July 2, 2009, just three days before his orders at the [REDACTED] ended, the Coast Guard authorized his re-appointment as a regular, active duty officer as of July 6, 2009, but advised him to coordinate his reporting date with his new unit. The applicant signed the Acceptance and Oath of Office in [REDACTED] on July 9, 2009. Given these circumstances, the Board is persuaded that the applicant moved his household goods expeditiously from [REDACTED] and should not be deprived of separation pay because the Acceptance and Oath of Office form was signed on July 9, instead of July 6. The Board finds that his non-receipt of separation pay constitutes an injustice under these circumstances. The Coast Guard has acknowledged the injustice in this case and recommends correcting the date of the applicant's Acceptance and Oath of Office form from July 9, 2009, to July 6, 2009.

4. Accordingly, relief should be granted by correcting the date on the applicant's Acceptance and Oath of Office form from July 9, 2009, to July 6, 2009, so that his military record will show that he returned to active duty in the Regular Coast Guard on July 6, 2009, and he will be entitled to separation pay.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

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<sup>1</sup> 33 C.F.R. § 52.24(b).

<sup>2</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

**ORDER**

The application of former [REDACTED] USCG, for correction of his military record is granted as follows:

The Coast Guard shall correct the date on his Acceptance and Oath of Office form from July 9, 2009, to July 6, 2009, so that his military records reflect that he returned to the regular, active duty Coast Guard on July 6, 2009, and is entitled to separation pay because he had served on active duty for more than six continuous years when he separated on May 15, 2015. The Coast Guard shall pay him any amount due as a result of this correction.

December 11, 2015

