

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS


Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 15-97

DECISION OF THE DEPUTY GENERAL COUNSEL

I approve the Final Decision of the Board.

I disapprove the Final Decision of the Board.


Deputy General Counsel
Delegate of the Secretary
Department of Transportation

DATE: Mar. 21, 1997

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Coast Guard Record of:

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FINAL DECISION TO IMPLEMENT RELIEF PURSUANT TO AN ACT OF
CONGRESS

██████████ Deputy 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 November 4, 1996, when the applicant asked that the relief afforded him in the recommended decision in BCMR Docket No. 278-88 be substituted for the order in the final decision in that case.

This final decision, dated December 6, 1996, is signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICABLE STATUTORY PROVISIONS

14 U.S.C. § 425(a)

The Secretary shall complete processing of an application for correction of military records under section 1552 of title 10 by not later than 10 months after the date the Secretary receives the completed application.

14 U.S.C. § 425(c)

If a recommended decision was modified or reversed on review with final agency action occurring after expiration of the 10-month deadline . . . , an applicant who so requests shall have the order in the final decision vacated and receive the relief granted in the recommended decision if the Coast Guard has the legal authority to grant such relief. The recommended decision shall otherwise have no effect as precedent.*

* This section "applies to any applicant who had an application filed with or pending before the Board or the Secretary of the department in which the Coast Guard is operating on or after June 12, 1990, who files with the Board for Correction of Military Records of the Coast Guard an application for relief under the amendment made by subsection (a). . . ."

SUMMARY OF PROCEDURAL HISTORY

On June 6, 1988, the applicant asked the BCMR to invalidate his involuntary discharge from the Coast Guard and to restore him to active duty on the ground that it was an error and an injustice for the Coast Guard to discharge him, after nearly 18 years of active duty, without a hearing. He also requested that certain performance evaluations and related entries in his service record be removed because they were biased.

The Board signed a recommended decision in which it granted partial relief to the applicant. Pursuant to 33 CFR § 52.64(b), this recommended decision was forwarded for review to the Deputy General Counsel, the Delegate of the Secretary of Transportation (Delegate).

On April 18, 1991, the Delegate disapproved the BCMR's recommended decision in BCMR Docket No. 278-88 and denied the relief requested by the applicant. The Delegate's final decision was issued after the expiration of the 10-month deadline for processing the applicant's request for relief.

In October 1996, section 425 was added to title 14, United States Code.

On November 4, 1996, the applicant requested, pursuant to 14 U.S.C. § 425, that the relief afforded him in the recommended decision in BCMR Docket No. 278-88 be substituted for the order in the Delegate's final decision in the case. The applicant's request was docketed as BCMR Docket No. 15-97.

On November 6, 1996, the BCMR requested comments, within 15 days, from the applicant, the Coast Guard, and the Delegate regarding the applicant's November 4, 1996 request.

On November 21, 1996, the Coast Guard submitted to the BCMR a memo regarding the applicant's request. The Service stated that it "is not aware of any reason in this case not to grant the relief requested" by the applicant. The Coast Guard also provided numerous recommendations to the BCMR with regard to the processing of requests under 14 U.S.C. § 425. A copy of the Coast Guard's memo was forwarded to the applicant and to the Delegate.

Neither the Delegate nor the applicant submitted comments to the BCMR regarding the applicant's current application.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions regarding the applicant's request:

1. The BCMR has jurisdiction concerning this matter pursuant to section 1552 of title 10, United States Code.

2. The applicant is among those entitled to relief under section 425(c) of title 14, United States Code, because final agency action with regard to his request for relief in BCMR Docket No. 278-88 did not occur until after the expiration of the 10-month deadline.

3. The Board is not aware of any reason why the Coast Guard would not have the legal authority to grant the relief afforded to the applicant in the recommended decision in BCMR Docket No. 278-88. Furthermore, the Coast Guard stated that it "is not aware of any reason in this case not to grant the relief requested" by the applicant.


4. Accordingly, the order in the final decision in BCMR Docket No. 278-88 should be vacated. The relief afforded to the applicant under the recommended decision in BCMR Docket No. 278-88 should be substituted for the vacated order in the final decision in that case.

5. Pursuant to the stated intent of section 425(c) of title 14, United States Code, the recommended decision in BCMR Docket No. 278-88 shall otherwise have no effect as precedent.

[ORDER AND SIGNATURES FOLLOW ON THE NEXT PAGE]

ORDER

Pursuant to 14 U.S.C. § 425(c), the following relief afforded in the recommended decision in BCMR Docket No. 278-88 shall be substituted for the order in the final decision in that case:

The military record of former  USCG shall be corrected by directing that his discharge be voided and his record show that he served continuously for twenty years, at which time he retired. The Coast Guard shall pay the applicant the amount due him as a result of this correction.

