


DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:

Docket
No. 120-96

FINAL DECISION ON REQUEST FOR RECONSIDERATION


This proceeding, BCMR No. 120-96, has been conducted pursuant to the provisions of section 1552 of title 10, United States Code and section 52.67 of title 33 of the Code of Federal Regulations. It was commenced on June 5, 1996, upon the BCMR's receipt of the applicant's request for reconsideration of the final decision in BCMR Docket No. 215-90.

This final decision on the request for reconsideration, dated June 13, 1997, is signed by three duly appointed members who were designated to serve as the Board in this case.

As of August 8, 1996, the applicant was an active duty chief warrant officer - 2 (CWO2).

First BCMR Proceeding (BCMR 215-90)

On June 29, 1990, the applicant, who was a chief machinery technician (MKC) at the time of application, asked the BCMR to correct his military record to show that he received a Zone B selective reenlistment bonus (SRB) on February 14, 1982, pursuant to ALDIST 004/82.

On December 14, 1990, the Board unanimously denied the applicant's request.

In denying the application, the Board stated that "[t]he applicant was not eligible to extend his enlistment in February 1982, to obtain a Zone B SRB. ALCOAST 009/80, issued July 31, 1980, which implemented the Zone B program, required that an individual be serving in pay grade E-5 or above in order to be eligible for a Zone B SRB [Commandant Instruction 7220.13]. The applicant was serving in pay grade E-4 in February 1982 and thus was ineligible at that time to extend his enlistment to obtain a Zone B SRB."

On December 20, 1990, the Board sent a copy of its decision to the applicant.

Second BCMR Proceeding (BCMR 120-96)

On June 5, 1996, the BCMR received a request from the applicant for a review of his "Previous Package, Docket No 215-90." In his request, which was docketed as No. 120-96, the applicant asked that his records be corrected to reflect "an agreement to extend his enlistment for six years on 14 February 1982 . . . [with the award of] a zone B SRB." In a later submission, the applicant said he "was informed . . . that there had been a new ruling on initial requests for corrections for a zone B SRB."

Views of the Coast Guard

On August 21, 1996, the Chief Counsel of the Coast Guard advised the Board that the applicant was not eligible to have his decision reconsidered. The Coast Guard quoted from 33 CFR § 52.67 to the effect that an applicant, to be eligible, must present evidence or information that was not previously considered by the Board, that could result in a different decision, that could not have been presented earlier in the exercise of reasonable diligence. Alternatively, an applicant is eligible for reconsideration if he or she presents evidence or information that the Board committed "legal or factual error in the original determination."

The Coast Guard said that it was not aware of any "new ruling," and it submitted that the applicant has not provided any new evidence relevant to his case or evidence that would entitle him to relief. The Service said that "[his] application should therefore be denied."

Response of the Applicant to the Views of the Coast Guard

A copy of the views of the Coast Guard was sent to the applicant on August 23, 1996, inviting him to respond to the position of the Service.

The applicant stated that he was an E-4 on February 14, 1982; an E-5 on July 1, 1982; an E-6 on July 1, 1983; and an E-7 on March 1, 1987. He also said that he spoke with a retired enlisted member and a warrant officer who told him they received Zone B SRB bonuses as an E-4. If it is determined that he was not eligible because he was an E-4 at the time, he asked how many Zone B bonuses were given to E-4s.

SUMMARY OF REGULATIONS REGARDING RECONSIDERATION

The decision on eligibility for reconsideration is made in accordance with paragraph (a) of § 52.67.

Section 52.67(a) provides that a final decision can be reconsidered if the applicant presents evidence or information (1) that was not previously considered by the Board; (2) that could result in a determination other than that originally made; and (3) that could not have been presented to the Board prior to its original determination in the exercise of reasonable diligence. A request can also be reconsidered if the Board or Secretary "committed legal or factual error" that could have resulted in a determination other than that made.

Section 52.67(e) provides that "[a]n applicant's request for reconsideration must be filed within two years after the issuance of a final decision, except as otherwise required by law."

Section 52.67 became a final rule on May 14, 1996.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's request for reconsideration of BCMR No. 215-90, the submissions of the applicant and the Coast Guard, the BCMR's rule on reconsideration (33 CFR § 52.67), the submissions in BCMR No. 120-96, and applicable law:

1. The Board has jurisdiction of the applicant's request pursuant to § 52.67 of title 33 of the Code of Federal Regulations.

2. On June 5, 1996, the applicant asked the Board to reconsider its decision of December 14, 1990. On that date, the Board denied the applicant's application for relief in BCMR No. 215-90.

3. The Board's rule on reconsideration took effect on May 14, 1996. The application for reconsideration was submitted to the Board on June 5, 1996, after the revised rule had taken effect.

4. The revised rule provides that a request for reconsideration must be filed with the Board within two years after the issuance of a final decision. 33 CFR 52.67(e). The applicant filed his request for reconsideration in this case five years, five months, and 22 days after the issuance of the final decision in BCMR No. 215.90.

5. The applicant's request for reconsideration should not be granted under § 52.67(a)(1) because it does not meet the three requirements for reconsideration of an application under that provision:

a. The applicant is required to present evidence or information that was not previously considered by the Board. The applicant in this case did not present any evidence or information that had not been previously considered, except to allege that "there had been a new ruling on initial

requests for corrections for a zone B SRB." The applicant did not establish that there had been such a ruling and what it provided.

b. The new information should be considered if it "could have resulted in a determination other than that originally made." The new ruling offered by the applicant in this case would not, in the absence of proof, have changed the outcome of this case.

c. The new information "could not have been presented to the Board prior to its original determination if the applicant had exercised reasonable diligence." The applicant does not identify the date of the "new ruling."

5. The applicant's request should not be granted under § 52.67(a)(2) because the applicant has not shown legal or factual error on the part of the Board.

6. Accordingly, the application for reconsideration should be denied.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application of _____, USCG, for reconsideration of the Board's decision in BCMR No. 215-90, is denied.

