

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 1999-051

FINAL DECISION

██████████ Deputy Chairman:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on January 12, 1999, upon the Board's receipt of the applicant's request. The application was complete on January 11, 2000, the date the Board received the applicant's military record.

This final decision, dated June 1, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, a retired chief boilerman (BTC; pay grade E-7), asked the Board to advance him to pay grade E-8 or E-9.

On March 26, 1958, the applicant enlisted in the Coast Guard as a BT3 (pay grade E-4). While on active duty in the Coast Guard he advanced from pay grade E-4 to pay grade E-6. Prior to enlisting in the Coast Guard, the applicant had previously served on active duty in the Navy and in the Navy Reserve, where he was subsequently advanced to pay grade E-7.

In 1963, the applicant was placed on the Temporary Disability Retirement List (TDRL) for approximately five years. In December 1967, he was permanently retired from the Coast Guard at pay grade E-6 due to a 70% disability, for psychotic depressive reaction.

On December 15, 1995, the applicant filed an application with the Board, BCMR No. 45-96, wherein he claimed that he was treated unfairly when the Coast Guard enlisted him as a BT3 (E-4) in 1958, notwithstanding the fact that he had previously been an E-7 in the Navy. He also complained that he had been retired as an E-6 rather than an E-7.

On August 29, 1997, the Board found in BCMR No. 45-96 that the Coast Guard had committed an error by retiring the applicant in pay grade E-6 rather than pay grade E-7. The Board further stated that the applicant should have been retired in the highest grade held during his military service. See 10 U.S.C. § 1372.

On June 12, 1999, the applicant filed a second application with the Board, Docket No. 1999-051 (current application), requesting to be advanced to pay grade E-8 or E-9. In support of this application, the applicant stated the following:

... When I went before the Retirement Board in 1963 and was placed on temporary disability retirement at \$200.00 per month, my rate at the time was E-6 . . . I mentioned to the Board at that time that I held the rank of Chief (E-7); however, it seemed that no one was willing to take the responsibility of retiring me on temporary disability at the highest rate I held in the Navy (E-7) Chief. As a result I went 30 years without the prestige and privilege of being a Chief. . . [T]he Correction Board docket #45-96 admitted an error was mistakenly made. I was then elevated to (E-7) Chief with back pay. It took me almost two years of writing letters, in addition to Congressional assistance in August of 1998 before relief was finally granted.

. . . I stayed on temporary disability retirement for over four years. After a final examination from a medical doctor, I was found fit to return to active duty. (Option, with my consent in the next highest grade.) Had I been temporarily retired as an E-7 I could have returned as an E-8; however, I was only an E-6, as the result of an error. I declined to return to active duty as an E-6. Relief is requested due to that fact. Had I been an E-7 chief, I would have been more than willing to return as an E-8. In the event that I returned to active duty with the proper rating that I was denied, I would have continued my service for 8 to 10 more years. There is no doubt I could have retired permanently as an E-9.

. . . While on the temporary disability retirement I was still attached to the service in a recuperation capacity. . . . However, when I was permanently retired I never received this four year time for pay purposes.

The applicant submitted a copy of a letter from the Commandant, dated November 21, 1967, informing him that he had been found unfit for duty by reason of physical disability rated at 70%. The Commandant also informed the applicant that his name would be removed from the temporary disability retired list and that he would be permanently retired effective December 5, 1967.

Views of the Coast Guard

On November 5, 1999, the Board received the advisory opinion from the Chief Counsel of the Coast Guard. He recommended that the Board deny the applicant's request.

The Chief Counsel noted that the Coast Guard had corrected the applicant's military record to show that he was retired as an E-7, the highest grade held during his military service, in accordance with the Board's order in BCMR No. 45-96.

The Chief Counsel stated that the applicant's claim that if he had been placed on the TDRL as an E-7, he could have returned to active duty as an E-8, despite the fact that he was found unfit for duty, is incorrect as a matter of law. In this regard the Chief Counsel stated the following:

... Applicant's placement on the permanent retired list in December 1967 was not a determination that required Applicant's acquiescence. The Coast Guard Physical Evaluation Board found Applicant unfit to perform the duties of his rate by reason of permanent physical disability and ordered him retired with a 70% disability rating. ... [T]he ... Applicant has presented no evidence to support his allegation that he was qualified for advancement to E-8, the Coast Guard has no authority to promote a member who was temporarily or permanently retired. ... The Applicant appears to confuse the nature of the relief he was provided by the Board in BCMR No. 45-96. ... [T]he Board concluded that the Coast Guard failed to review the Applicant's record for a highest grade held determination under the authority of 10 U.S.C. § 1372. ... [A] highest grade held determination does not create a presumption that the member should have been advanced to that grade while on active duty. ... A [highest grade held] determination is a "tombstone" promotion executed after the member has been retired. Therefore, the correction ordered in BCMR case No. 45-96 did not implicate the grade held by Applicant immediately prior to his placement on the TDRL in 1963.

The Chief Counsel stated that the evidence affirmatively rebuts the applicant's claim that he was found fit for full duty. The Chief Counsel stated that the applicant has failed to provide any evidence that the Coast Guard committed either error or injustice.

Applicant's Response to the Views of the Coast Guard

On April 12, 2000, the Board received the applicant's response to the views of the Coast Guard. The applicant stated that he believed his record should be amended to reflect that he was an E-7 in 1958. He further stated that "in 1958 the United States Coast Guard assigned [him] to a recruiting position, and this position was available only to persons who were at a minimum, a grade E6. The recruiting position was not available to persons who were grade E4, and [his] records indicate he was incorrectly categorized as a grade E4 at this time."

The applicant further stated as follows:

Rather than requesting the compensation that [I am] entitled to for all the years in which I was not paid the proper remuneration due to the error in [my] ranking, [I am] instead proposing that [I] be given a ranking of an E9. [I have] dedicated [my] life to [my] country and it is not financial reward which [I] am interested in; it is only the proper recognition.

On April 20, 2000, the Board received another statement from the applicant, in which he stated that being elevated to E9 would greatly assist him in his efforts to recruit qualified personnel for the Coast Guard.

APPLICABLE LAW

Section 1211(b) of title 10 United States Code states as follows:

(b) with his consent, any member of the . . . Coast Guard whose name is on the temporary disability retired list and who is found to be physically fit to perform the duties of his office, grade, rank, or rating . . . shall--

(3) if he held a permanent enlisted grade in a regular component when his name was placed on the temporary disability retired list, be reenlisted in his regular component in the grade permanently held by him when his name was placed on the temporary disability retired list, or in the next higher enlisted grade.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's submissions, the submissions of the Coast Guard, the applicant's military record, and applicable law:

1. The BCMR has jurisdiction of this case pursuant to section 1552 of title 10, United States Code. The application is timely, since the Board waived the statute of limitations in BCMR No. 45-96, a related case. This application was filed within three years after the Board issued the final decision in that case.

2. The applicant questions whether the Coast Guard committed an error by enlisting him as an E-4 in 1958, notwithstanding the fact that he had reached pay grade E-7 (BTC) in the Navy. The rate of a former Navy petty officer who enlisted in the Coast Guard was determined by the rate that was available on the "open rates"¹ list at the time of enlistment. Article 1-G-17 of the Personnel Manual (1955). The applicant enlisted in the Coast Guard as a BT3 (pay grade E-4). Therefore, the Board finds that BT3 was the highest pay grade available on the "open rates" list for the enlistment of former service members in the applicant's rating. The applicant has presented no evidence that shows a higher availability for BTs at the time of his enlistment.

3. Moreover, the applicant's enlistment in the Coast Guard was completely voluntary. He was aware at the time of his enlistment that he was enlisting in the lower pay grade because his enlistment contract, which he signed, stated that he was enlisting as a BT3.

4. The applicant also alleged that his enlistment as an E-4 in the Coast Guard was a mistake and an injustice because of his assignment to recruiting duty, which was available only to members in pay grade E-6 and above. However, Article 4-B-23 of the Personnel Manual (1955) did not have a minimum pay grade requirement for members wishing to serve on recruiting duty. The Board finds that it was not in violation of the Personnel Manual, nor was it unfair for the Coast Guard to assign the applicant to recruiting duty upon his enlistment in the Coast Guard. The applicant has failed to

¹ Open rates list contains the ratings with corresponding pay grades for which the Coast Guard is accepting enlistments at any given time.

establish that the Coast Guard committed an error or injustice when it enlisted him as an E-4.

5. The applicant has failed to establish that he should be retired in a pay grade higher than E-7. In 1963, the applicant was determined to be unfit for active duty and placed on the TDRL. He was subsequently permanently retired. Contrary to the applicant's claim there is no evidence in his military record that he was ever determined to be fit to return to active duty once the disability evaluation process began. Accordingly, returning to active duty, at any pay grade, was not an option available to the applicant. In addition, there is no evidence that the applicant qualified through a servicewide examination in the Coast Guard for advancement to any grade higher than BT1 (E-6).

6. The correction ordered to the applicant's record by the Board in BCMR No. 45-96 applied only to his retired pay grade and not to any active duty pay grade. Section 1372 of title 10, United States Code, permits a member to be retired in the highest grade satisfactorily held during military service. The applicant's record was corrected to show that he retired in pay grade E-7, the highest grade he held while serving in the military. He has received back pay for the period involved. There is no basis for correcting the applicant's record to show that that he was advanced to pay grade E-8 or E-9 while serving on active duty in the Coast Guard. There is also no basis for correcting the applicant's record to show that he retired in a pay grade higher than E-7. He simply never served in the military service in a grade higher than E-7.

7. Accordingly, the applicant's request for relief should be denied.

ORDER

The application of
correction of his military record is denied.

, USCG, for

