

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2013-158

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████████████████████

FINAL DECISION

This proceeding was conducted under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case upon receiving the completed application on August 7, 2013, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated April 4, 2014, 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 asked the Board to correct his record to show that, instead of being retired as a chief petty officer in pay grade E-7 on September 1, 1998, he was advanced to senior chief petty officer in pay grade E-8 on July 1, 1997, and extended on active duty until retiring at the higher pay grade on or about January 13, 1999.

The applicant alleged that in June 1997, when he was about to be advanced to E-8 on July 1, 1997, he was erroneously told that he would have to reenlist for at least one year to accept the advancement and that he could not just extend his enlistment for a few months to obligate sufficient service to meet the requirement of having at least two years of obligated service before being advanced. The applicant called an assignment officer to find out where he might be transferred depending upon how long he reenlisted for, and the assignment officer said, "I'll let you know where you're going after you reenlist." Therefore, the applicant elected not to reenlist for the purpose of accepting the advancement. Because he had declined to meet the two-year obligated service requirement to accept the advancement, he was advised that he was ineligible to compete for advancement for a year. Instead of reenlisting to receive the advancement, the applicant submitted his request for retirement.

In July 2013, the applicant stated, after researching the Personnel Manual, he realized that this advice was erroneous and that he should have been told he could accept the advancement by extending his enlistment for just six months. The applicant alleged that if he had been properly

counseled that he could obligate sufficient service to be advanced just by signing a six-month extension contract, he would have signed the extension, accepted the advancement on July 1, 1997, and retired two years later in pay grade E-8. He stated that his effective retirement date would have been August 1, 1999. In support of these allegations, the applicant submitted the following documents:

- A memorandum dated June 19, 1997, shows that the Human Resources Service and Information Center sent the applicant's command a certificate of advancement to be presented to him on July 1, 1997.
- A request chit submitted by the applicant on June 24, 1997, shows that he asked to be advanced on July 1, 1997, and noted that he intended to retire no later than January 13, 1999.
- A Page 7 entry dated June 25, 1997, shows that the applicant was advised that he was ineligible to participate in the examination for advancement to E-8 for a year because he had declined to obligate the required service for accepting his advancement in accordance with Article 5-C-25-e of the Personnel Manual.
- On June 26, 1997, the applicant's command sent the Personnel Command a message stating that the applicant had "declined to meet [the] 2 year obligated service requirement" in Article 5-C-25-e and had been "counseled on ineligibility for advancement to BMCS and participation in 1998 servicewide examination."

SUMMARY OF THE RECORD

The applicant first enlisted in the Coast Guard on July 17, 1978, and served on continuous active duty thereafter. The final contract in his record is a five-year enlistment obligating service from January 14, 1994, through January 13, 1999.

On September 3, 1997, the applicant submitted a request to retire upon completing 20 years of service. His request was approved on October 6, 1997, and he was retired from the Coast Guard on September 1, 1998, as a BMC/E-7.

VIEWS OF THE COAST GUARD

On December 5, 2013, the Judge Advocate General (JAG) submitted an advisory opinion in which he recommended that the Board deny relief in this case. The JAG adopted the findings and analysis in a memorandum prepared by the Personnel Service Center (PSC).

PSC noted that under Article 5.C.25.e. of the Personnel Manual in effect in 1997, members advancing to E-7, E-8, or E-9 were required to serve on active duty for at least two years in their new pay grade and to "either extend their enlistment or reenlist prior to advancement, if necessary, to ensure meeting the two year obligated service requirement." PSC stated that the applicant "requests relief based on his unsubstantiated statement that he was counseled that he would need to obligate one full year of service to reach his two-year obligated service requirement." If he had advanced to E-8 on July 1, 1997, he would have had to obligate service through July 1, 1999. PSC noted that the applicant's request chit shows that he wanted to retire no later

than January 13, 1999; that the Page 7 shows that he was counseled but refused to obligate service for advancement; and that he submitted a request to retire in September 1997. PSC stated that because the application is untimely and nothing in the record substantiates the applicant's claim that he was miscounseled, his request should be denied.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 9, 2014, the applicant responded to the Coast Guard's advisory opinion. The applicant claimed that his application was timely filed because he did not discover the error in his record until July 16, 2013, and filed his application soon thereafter. The applicant repeated his allegation that he was miscounseled about the amount of additional service he would have to obligate to accept the advancement. He alleged he was told that he would have to reenlist/extend for at least a year, whereas in fact he needed to extend his contract for only six or seven months. Had he been properly counseled, he would have extended his enlistment to accept the advancement orders.

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.
2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.
3. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice in his record.¹ The applicant alleged that his pay grade and date of retirement are erroneous and unjust and that he discovered this in July 2013. The applicant clearly knew his pay grade and date of retirement when he retired in 1998. The fact that in July 2013 he decided to read the Coast Guard Personnel Manual and argue that he was erroneously advised does not render his application timely since he clearly knew the allegedly erroneous information in 1998. Therefore, the Board finds that his application is untimely.
4. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.² In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the Board should not deny an application for untimeliness without "analyz[ing] both the reasons for the delay and the potential merits of the claim based on a cursory review"³ to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted that "the

¹ 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

² 10 U.S.C. § 1552(b).

³ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review.”⁴

5. Regarding the delay of his application, the applicant stated that he did not realize that he had received erroneous advice until July 2013. The Board finds that the applicant’s explanation for his delay is not compelling because he failed to show that anything prevented him from reviewing the regulations and challenging his pay grade in retirement more promptly.

6. A cursory review of the merits of this case indicates that the applicant’s claim cannot prevail on the merits. Under the Board’s rules at 33 C.F.R. § 52.24(b), the “Board begins its consideration of each case presuming administrative regularity on the part of Coast Guard and other Government officials,” and the applicant must submit sufficient evidence to overcome this presumption and to prove the existence of the error or injustice by a preponderance of the evidence. 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.”⁵ Therefore, the Board presumes that the advice the applicant received about the obligated service requirement for advancement and his ability to extend his enlistment was correct. Because the applicant has submitted no evidence to support his claim that he was miscounseled, the Board finds that his claim cannot prevail on the merits.

7. Accordingly, the Board will not excuse the application’s untimeliness or waive the statute of limitations. The applicant’s request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁴ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

⁵ *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 [REDACTED], USCG (Retired), for correction of his military record is denied.

April 4, 2014

