

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 98-96

FINAL DECISION

██████████ Attorney-Advisor:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on March 26, 1996, upon the Board's receipt of the applicant's request for correction of his military record.¹

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

Applicant's Request for Relief

The applicant, a former ██████████ (pay grade E-7), asked the BCMR to recalculate the final multiple² he received for the November 1991 servicewide exam (SWE).³ He stated that he never received a copy of his Personal Data Extract (PDE) to review prior to the 1991 SWE, and therefore, he was unaware that information regarding his receipt of a Coast Guard Achievement Award and a Commandant Letter of Commendation was not included in his SWE application. He asked the BCMR to recalculate his final multiple so that his retirement pay would be based on a pay grade of E-8, the pay grade which he would have achieved had he been advanced in the September, 1991 SWE.

¹ The application was complete on February 6, 1997, upon the Board's receipt of the applicant's military record.

² The SWE multiple is the value reached when the member's performance points, medals, awards, examination score, and time in service and pay grade credits are combined. The multiple is used to determine the member's rank for advancement to the next higher pay grade.

³ Records indicate that the SWE to which the applicant is referring took place in September, 1991, and not November, 1991.

The applicant retired from the Coast Guard on [REDACTED] at pay grade E-7.

Views of the Coast Guard

On March 24, 1997, the Coast Guard recommended that the applicant's request for correction of his record be denied. The Service stated that the applicant had submitted no evidence to show that his SWE multiple was incorrectly calculated, and that there was no evidence of such error in the applicant's service record.

The Coast Guard stated that during the time period of the applicant's complaint, the policy in effect regarding application and preparation for the SWE was explained in Article 5-D of the Coast Guard Personnel Manual (COMDTINST M1000.6A, Change 12). The policy was also explained by ALDIST 078/91.⁴ Those documents explained that Coast Guard Form 4716 (CG-4716) was the document completed by members, and used to calculate their SWE multiples. The Coast Guard asserted that PDEs were not used or distributed during that period.

The Coast Guard explained that the provisions of ALDIST 078/91 placed responsibility for the accuracy and completion of form CG-4716 upon the member submitting it. The Service stated that Form CG-4716 was verified by the member signing block 20 on the form. The form was not retained once the examination process was over, so the form signed by the applicant is not in his military record. The Coast Guard stated Article 5-D-2.d of the Personnel Manual provided that if block 20 on Form CG-4716 is not completed (signed by the applicant) then the form would be returned to the member, and it would not be processed for an SWE.

The Service stated that the applicant's Form CG-4716 must have been processed, since he was able to participate in the SWE. The Coast Guard stated that following receipt of the completed Form CG-4716, the "Coast Guard Institute was required to forward the data extracted from the CG-4716 to the reporting unit for verification against the file copy of the CG-4716." Therefore, "[a]bsent clear evidence to the contrary, the Board must assume that [the applicant's] SWE point credits were correctly calculated based on the data certified by Applicant himself in the CG-4716." See e.g., *Arens v. United States*, 969 F.2d 1034, 1037 (Ct. Cl. 1992) (quoting *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979) (rebuttable presumption that the administrators of the military, like other public officers, discharge their duties correctly, lawfully, and in good faith).

⁴ ALDISTs are all-Coast Guard bulletins distributed periodically to all Coast Guard districts. ALDIST 078/91 was distributed on April 19, 1991.

The Service stated that the Personnel Manual "provided Applicant a means to correct his point credits if the calculation was in error" by requesting increased point credit up to "one month after the SWE. . . ." Also, "appeals for requests for increased credit could have been submitted if a late request was returned for untimeliness." ALDIST 078/91 also stated that "[i]f inaccuracies are detected after submission of Form CG-4716, [the member can] immediately submit request for correction."

The Coast Guard stated that the applicant "presents no evidence, but only his conclusory statements, that he requested correction [of his SWE points] in a timely fashion" or that he is "entitled to recalculation of his 1991 SWE multiple, which could entitle him to lifetime retired pay and benefits at a pay grade in which he never actually served."

Applicant's Response to the Views of the Coast Guard

On March 31, 1997, the applicant was sent a copy of the views of the Coast Guard, and was encouraged to respond. No response was received from the applicant.

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 submission, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10, United States Code. The application was untimely.

2. An application for correction of a military record, to be timely, must be submitted within three years after the discovery of the alleged error or injustice. *See* 33 CFR § 52.22. The Board may still consider the application on the merits, however, if it is in the interest of justice to do so.

3. The applicant stated that he did not discover the alleged error until May, 1992, and that since then, he has been pursuing relief through other administrative channels. He decided to file an application with the BCMR after he had received no follow up information from his District, where he had made his initial inquiries. The Board has therefore decided to waive the time limitation and review the applicant's case on its merits, in the interest of justice.

4. ALDIST 078/91 explained the procedures for members to follow to participate in the September 1991 servicewide exam (SWE). ALDIST 078/91 stated that members interested in participating in the September 1991 SWE were

required to submit Form CG-4716. ALDIST 078/91 clearly stated that "no corrections would be allowed to Form CG-4716 after 30 days from the actual examination date." When the member signed Form CG-4716, he or she was certifying "the accuracy of all [information]" contained therein. If, after signing Form CG-4716, the member discovered an inaccuracy on the form, he or she had to immediately submit a request for correction, and if the member's request was denied for untimeliness, he or she could appeal for review.

The applicant's record and Form CG-4716 was submitted in 1991 for the SWE, but he did not discover the alleged error in his multiple until 1992. This was in excess of the 30 day limitation on corrections to a member's Form CG-4716. The applicant did not provide an explanation for why the error he alleges was not discovered when he signed his Form CG-4716 in 1991. It was incumbent upon him, in accordance with the provisions of ALDIST 078/91 and Article 5-D-2, to verify all information promptly and upon submission of the form.

5. The applicant has not shown that the alleged miscalculation of his SWE multiple is attributable to Coast Guard error or that he suffered an injustice as a result of the alleged error. The applicant had instructions available to him explaining the means through which he could correct his Form CG-4716 prior to its submission, and how to request recalculation of his SWE multiple. He has provided no evidence, other than his own statement, to show that he followed those steps; or that he appealed his request for point recalculation pursuant to ALDIST 078/91 or Article 5-D-2.

6. Accordingly, the application should be denied.

Final Decision: BCMR No. 98-96

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ORDER

The application to correct the military record of
, USCG, is denied.

