

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-153

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FINAL DECISION

This is a proceeding 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 on July 12, 2007, upon receipt of the applicant's completed application, and assigned it to staff member [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated April 10, 2008, 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 total commissioned service (TCS) date from May 21, 1986, to July 1, 1992, for the purpose of determining when he will attain 30 years of commissioned service. He stated that he graduated from the United States Coast Guard Academy and was commissioned an ensign on May 21, 1986. Upon failure to be selected for promotion to lieutenant, he was discharged from the regular Coast Guard on June 30, 1992, and was appointed an ensign in the Reserve on July 1, 1992. However, based on his prior commissioned service on active duty, the applicant's date of rank as a Reserve ensign was set at August 2, 1991. In 2002, he began serving on extended active duty as a Reserve Program Administrator.

The applicant stated that upon reviewing his record in 2005, he "realized the implications in my personal total commissioned service (TCS)." He stated that if his TCS is calculated from his date of appointment as an ensign in the regular Coast Guard in 1986, he will be "handicapped from contributing at the apex of my career. Not adjusting the TCS date precludes me from any chance of achieving meaningful participation as a Captain in the RPA Corps. In addition, given the high-3 retirement system, this handicap precludes me from the ability to earn a full CAPT retirement."

Therefore, the applicant asked the Board to correct his record so that only his commissioned service as a Reserve officer would count toward his TCS, and so that his years as a commissioned active duty officer from May 21, 1986, to June 30, 1992, would not count toward his TCS. The applicant argued that he is entitled to this correction because the Reserve accession

date in his record is not in accordance with 14 U.S.C. § 740(d) or Article 8.A.6. of the Reserve Policy Manual. Title 14 U.S.C. § 740 concerns the mandatory separation of Reserve officers who have failed twice of selection for promotion and states the following:

(d) For the purpose of this section, the total commissioned service of an officer who has served continuously in the Reserve following appointment in the grade of ensign shall be computed from the date on which that appointment was accepted. A Reserve officer initially appointed in a grade above ensign is considered to have the actual total commissioned service performed in a grade above commissioned warrant officer or the same total commissioned service as an officer of the Regular Coast Guard who has served continuously from an original appointment as ensign, who has not lost numbers or precedence, and who is, or was, junior to the Reserve officer, whichever is greater.

Article 8.A.6.a. of the Reserve Policy Manual states the following:

All commissioned officers in pay grades O-6 and below shall be removed from an active status after completion of 30 years total commissioned service, if they are not carried on an approved list of selectees for promotion to the grade of rear admiral (lower half).

(1) The total commissioned service of an officer who has served continuously in the Reserve following appointment in the grade of ensign shall be computed from the date on which that appointment was accepted.

(2) A Reserve officer initially appointed in a grade above ensign is considered to have whichever period of commissioned service is greater of the following:

(a) The total commissioned service actually performed in a grade above commissioned warrant officer (including commissioned service performed in other components prior to appointment in the U.S. Coast Guard Reserve), or

(b) The same total commissioned service as an officer of the regular Coast Guard who has served continuously from an original appointment as ensign, who has not lost numbers or precedence, and who is, or was at the time of original appointment, immediately junior to the Reserve officer.

(3) The TCS Years column of the Register of Reserve Officers, COMDTINST M1427.2 (series) is used as a guide for determining when officers will be removed from an active status. They will normally be removed on 30 June immediately following completion of 30 years total commissioned service.

VIEWS OF THE COAST GUARD

On December 18, 2007, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion prepared by the Coast Guard Personnel Command (CGPC) with a recommendation that the Board deny the requested relief but grant alternative relief by correcting the “expected loss date” in the applicant’s record from June 30, 2016, to June 30, 2022.

CGPC stated that neither 14 U.S.C. § 740(d) nor Article 8.A.6. of the Reserve Policy Manual explicitly addresses how to calculate the TCS of an officer with two successive ensign commissions. However, under the Coast Guard’s Personnel Management Information System/ Joint Uniform Military Pay System (PMIS/JUMPS) Analysis Manual, TCS is calculated for all

members as “the cumulative commissioned service (total years, months, days) of a commissioned officer for all prior military service.”

CGPC stated that because § 740(d) includes the phrase “[f]or the purpose of this section,” the calculation provided therein is presumably only for the purpose of calculating an officer’s mandatory separation date and not his TCS for pay purposes or other entitlements. Given the requirement in § 740(d) that “the total commissioned service of an officer who has served continuously in the Reserve following appointment in the grade of ensign shall be computed from the date on which *that appointment* was accepted” (emphasis added), CGPC concluded that the applicant’s commissioned service prior to “that appointment”—i.e. his Reserve appointment as an ensign—should not be included in the calculation of his TCS in determining his mandatory loss date. Therefore, CGPC recommended that his record be corrected to show that his expected loss date is June 30, 2022, instead of June 30, 2016.

APPLICANT’S RESPONSES TO THE VIEWS OF THE COAST GUARD

On December 21, 2007, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to submit a response within thirty days. No response was received.

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 10 U.S.C. § 1552. The application was timely filed.

2. Title 14 U.S.C. § 740(d) states that “[f]or the purpose of this section [which concerns the mandatory separation of a Reserve officer upon twice failing of selection for promotion], the total commissioned service of an officer who has served continuously in the Reserve following appointment in the grade of ensign shall be computed from the date on which *that appointment* was accepted.” (Emphasis added.) The phrase “that appointment” appears to refer to the officer’s Reserve appointment as an ensign and does not appear to contemplate a prior appointment as an ensign in the regular Coast Guard or other military service. The result of this provision—excluding the applicant’s six years of commissioned service as an ensign and lieutenant junior grade in the regular Coast Guard in calculating his TCS for the purpose of determining his mandatory separation date—is anomalous because the same statute provides that an officer who is originally appointed to the Reserve in a rank higher than ensign has all of his commissioned service above the grade of warrant officer in any military service included in his TCS. Although the exclusion of the applicant’s prior commissioned service as an active duty officer in the calculation of his TCS for any purpose is counterintuitive, the Board will accept the Coast Guard’s interpretation of the statute because of the language used therein and the lack of any contrary information.¹ The Board notes that the statutory language for computing TCS for

¹ See *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 866 (1984) (holding that “[w]hen a challenge to an agency construction of a statutory provision, fairly conceptualized, really centers on the

the purpose of determining the mandatory separation dates of Navy Reserve and Marine Corps Reserve personnel is similar, except that appointments as lieutenants junior grade are treated the same as appointments as ensigns.²

3. The way both the statute and the Coast Guard's regulation at Article 8.A.6. of the Reserve Policy Manual are written, the calculation of a Reserve officer's TCS for mandatory separation purposes includes all of his periods of commissioned service above the grade of warrant officer in any military service unless the officer accepts appointment in the Reserve as an ensign. For example, an officer with ten years of prior commissioned service in the Army who receives a Coast Guard Reserve commission as a lieutenant junior grade is, under 14 U.S.C. § 740(d), considered to have ten years of TCS for mandatory separation purposes upon accepting the Reserve appointment, but he will be considered to have zero years of TCS if he accepts the Reserve commission as an ensign. The applicant in this case accepted a Reserve commission as an ensign on July 1, 1992, and so under 14 U.S.C. § 740(d), his TCS for mandatory separation purposes should be computed from that date.

4. CGPC stated that to avoid subtracting six years from the computation of the applicant's TCS for pay purposes and still correct the applicant's TCS for mandatory separation purposes, the Board should order the Coast Guard to correct his "expected loss date" from June 30, 2016, to June 30, 2022. The applicant did not object to this recommendation.

5. Accordingly, relief should be granted by correcting the "expected loss date" in the applicant's record from June 30, 2016, to June 30, 2022.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

wisdom of the agency's policy, rather than whether it is a reasonable choice within a gap left open by Congress, the challenge must fail").

² Under 10 U.S.C. § 6389, titled "Navy Reserve and Marine Corps Reserve; officers: elimination from active status; computation of total commissioned service," paragraph (d) states the following:

(d) For the purposes of subsection (c), the total commissioned service of an officer who has served continuously in the Navy Reserve or the Marine Corps Reserve following appointment therein in the permanent grade of ensign or second lieutenant, as the case may be, shall be computed from June 30 of the fiscal year in which he accepted the appointment. Each other officer is considered to have for this purpose as much total commissioned service as the years of active commissioned service of any regular officer on the active-duty list of the Navy not restricted in the performance of duty, or any regular officer on the active-duty list of the Marine Corps not restricted in the performance of duty, as appropriate, who has served continuously since original appointment as an ensign on the active-duty list of the Navy or as a second lieutenant on the active-duty list of the Marine Corps, has not lost numbers or precedence, and is, or has been after September 6, 1947, junior to that other officer. However, the total commissioned service that the other officer is considered to have may not be less than the actual number of years he has served as a commissioned officer in a grade above chief warrant officer, W-5.

ORDER

The application of [REDACTED], USCGR, for correction of his military record is granted. The Coast Guard shall correct the “expected loss date” in his record to show the date June 30, 2022 (instead of June 30, 2016).

