

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2012-207



FINAL DECISION

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the application upon receipt of the applicant's completed application on August 8, 2012, and subsequently prepared the final decision as required by 33 CFR § 52.61(c).

This final decision, dated May 9, 2013, 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 he is entitled to certified surfman Special Duty Assignment Pay (SDAP)¹ from April 1, 2011 to January 10, 2012. The applicant stated that he received SDAP until April 1, 2011, when he transferred to a new duty. His SDAP restarted on January 11, 2012, once he recertified at his new duty station.

The applicant stated that he arrived at his new duty station on April 14, 2011, and that his local Servicing Personnel Office (SPO) refused to pay SDAP until he recertified at that duty station. The applicant argued that according to SDAP policy in effect at that time, SDAP was terminated once he departed his old unit and restarted upon arrival at his new unit. The applicant submitted a copy of ALCOAST 043/00 issued on February 5, 2000, which stated the following in pertinent part:

¹ Article 1.4. of COMDTINST 1430.1P states that SDAP is an "additional monthly payment that serves as an incentive to retain enlisted personnel required to perform extremely demanding duties or duties demanding an unusual degree of responsibility and an inducement to persuade qualified personnel to volunteer for such duties." Paragraph 1.5. states that an annual SDAP board will review current SDAP authorizations, validate and determine SDAP eligibility, and approve new requests for SDAP entitlement. An ALCOAST will announce actual SDAP entitlement and eligibility criteria.

- A. Effectively immediately, a surfman receiving SDAP at their present unit . . . who transfers PCS to fill a surfman billet at the new unit, will be authorized surfman SDAP beginning the date they report abroad the new unit.
- B. Members must recertify as surfman at the new unit within one year of reporting abroad to continue receiving SDAP. If members do not recertify, their surfman SDAP will terminate on that date.

Eligibility for SDAP is determined by a panel that meets periodically and announces its decisions by ALCOASTS. The applicant submitted ALCOAST 314/00 issued on July 31, 2000, with an October 1, 2000 effective date and ALCOAST 462/09 issued on August 1, 2009 with an October 1, 2009 effective date. ALCOAST 314/00 stated that a certified surfman serving in a surfman billet and routinely serving in a unit's rotational watch schedule as a certified operational surfman is entitled to SDAP. ALCOAST 462/09 stated that a certified surfman is eligible for SDAP if the member is serving in a surfman billet or is stationed at a surf station and routinely serves in the unit's rotational watch schedule as a certified operational surfman.

The Coast Guard submitted ALCOAST 149/10 dated August 13, 2010 and ALCOAST 412/11 issued on September 2, 2011. Both ALCOASTS state that a certified surfman is eligible for SDAP if the surfman is serving in a surfman billet or is stationed at a surf station and routinely serves in the unit's rotational watch schedule as a certified operational surfman.

VIEWS OF THE COAST GUARD

On February 8, 2013, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant relief in accordance with a memorandum submitted by the Commander, Personnel Service Center (PSC). PSC stated that the applicant was eligible for SDAP from April 14, 2011 to January 10, 2012.

PSC stated that under paragraph 5.C. of ALCOAST 412/11, issued on September 2, 2011, a certified surfman is eligible for SDAP if the surfman is serving in a surfman billet or is stationed at a surf station and routinely serves in the unit's rotational watch schedule as a certified operational surfman. PSC stated that the use of "or" in ALCOAST 412/11 left the provision open to interpretation. Some surf units interpreted the provision as allowing recertifying personnel to collect SDAP immediately upon reporting and other units interpreted it as disallowing SDAP until recertification was completed. PSC stated the issue was raised in 2011 and the SDAP panel resolved the matter in ALCOAST 425/12 issued on September 24, 2012. Paragraph 3 of the ALCOAST states that "if a qualified (certified) surfman, in a surf billet, is transferred to another surf billet they must recertify and routinely serve in their new unit's rotational watch schedule prior to receiving SDAP."

PSC stated that SDAP eligibility for a break-in surfman or a recertifying surfman was not clarified until September 24, 2012, when the Coast Guard issued ALCOAST 425/12 (covering FY13). Although, ALCOAST 043/00 issued on February 5, 2000, states that a surfman receiving SDAP at his or her present unit and who transfers to fill a surfman billet at a new unit is authorized SDAP beginning with the date on which the surfman reports to the new unit, PSC

stated that ALCOAST 043/00 did not apply to the applicant because as with all ALCOAST, it automatically expired after one year. PSC stated that “[d]ue to the ambiguous language in the annual SDAP messages, the applicant [qualified] to receive SDAP for the period of time he was recertifying [at his new unit]”

The JAG agreed with PSC that the applicant should have relief, but did not agree that the policy in effect at the time, was so vague or broad as to allow relief for a member who was ordered into a surfman billet without a prior surfman certification. The JAG recommended that if the Board granted relief, “it [should] carefully craft such relief in a manner that limits the scope of the applicability of relief to only those cases where the applicant requesting relief in similar circumstances and under the same applicable policy, was a previously certified surfman.”

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 12, 2013, the Board sent the applicant a copy of the views of the Coast Guard for a response. The Board did not receive a response 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 of the United States Code. The application was timely.

2. The Board begins its analysis in every case by presuming that the disputed information in the applicant’s military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust. 33 C.F.R. § 52.24(b).

3. The Coast Guard recommended, and the Board agrees, that the applicant is entitled to relief because the Coast Guard’s surfman SDAP eligibility policy during the period in question was confusing and ambiguous. The policy in effect from October 1, 2009, until September 23, 2012, stated that a certified surfman was eligible for SDAP if the member was “serving in a surfman billet or stationed at a surf station and routinely served in the unit’s rotational watch schedule as a certified operational surfman.” This policy did not specifically address whether SDAP terminated for a certified surfman, like the applicant, who was undergoing recertification to fill a surfman billet at a new unit. Therefore, units interpreted the policy differently, with some units allowing SDAP during recertification at new units and others not allowing SDAP. Due to the confusion that existed with regard to this policy the applicant, who was a previously certified surfman, did not receive SDAP while undergoing surfman recertification at his new unit.

4. The JAG agreed with PSC’s recommendation, but stated that the Board should craft the order for relief in a manner that ensures that it is limited to those members who served under the same policy as the applicant and who were previously certified surfmen like the applicant.

However, the Coast Guard is given the opportunity to comment on each application through an advisory opinion and should raise any specific issues with regard to a particular case at that time. The grant of relief in this case is written to correct the error and/or injustice suffered by this particular applicant.

5. Accordingly, the applicant is entitled to relief as recommended by the Coast Guard.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of [REDACTED] USCG, for correction of his military record is granted. His record shall be corrected to show that he was eligible for certified surfman SDAP for the period from April 14, 2011 to January 10, 2012. The Coast Guard shall pay him any amount he may be due as a result of this correction.

No other relief is granted.

