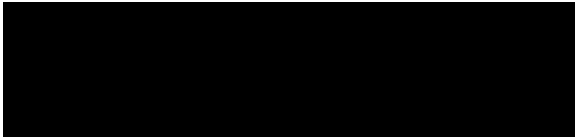


**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2013-033



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 after receiving the applicant's completed application on November 29, 2012, 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 August 8, 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, who retired from active duty on March 1, 1987, asked the Board to correct his retired pay by adding a 10% good conduct bonus. He alleged that he is entitled to the 10% bonus because of his record of good conduct and because he entered active duty prior to 1963. The applicant stated that when he enlisted in 1962, having already served four years in the Navy, he was told that if he achieved sixteen more years of good conduct, his retired pay would be increased by the bonus.

The applicant alleged that he discovered the error on August 10, 2011. Prior to that date, he assumed that the 10% bonus was being included in his retired pay. However, in 2011, after attending a Coast Guard reunion, he called the pay office and learned that he was being paid at the 50% rate rather than the 60% rate based on good conduct. He was told that he would need to submit his performance and conduct marks records to prove that he is entitled to the 10% bonus. After he submitted the records, he was told that he would have to get his record corrected by the BCMR.

In support of his request, the applicant submitted copies of his military records, which are included in the summary of the record below and a copy of a decision of the Comptroller General of the United States, B-193199, which states that under 14 U.S.C. § 357(c) (1958), Coast Guard members who retired with 20 years of service were entitled to have their retired pay rate increased by 10% if their average marks in conduct while serving in the Coast Guard were

not less than 97.5% of the maximum. Although the 10% good conduct increase to retired pay was repealed by Public Law 88-114, the Comptroller General noted, there was a saving provision that retained the 10% increase for those who, like the applicant, served on active duty in the Coast Guard on or before September 6, 1963, and subsequently earned retirement from the Coast Guard with the requisite good conduct marks.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard for a term of four years on February 7, 1962. His first discharge form DD 214, dated November 17, 1965, shows that upon enlisting he had 3 years, 9 months, and 14 days of prior active service. The applicant served continuously on active duty thereafter and was retired on March 1, 1987, with 20 years and 8 days of total active service. His final DD 214 shows that he had earned his fourth Coast Guard Good Conduct Award before he retired. The applicant's marks pages show that he received a perfect conduct mark of 4.0 on each of 36 performance evaluations he received while serving on active duty in the Coast Guard.

VIEWS OF THE COAST GUARD

On June 4, 2013, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request because the applicant is already receiving the increased good conduct retired pay rate of 60%. In support of this allegation, the JAG submitted the following three documents in addition to the applicant's military records:

- A memorandum from Commander, Personnel Service Center states that the applicant is legally entitled to the 60% retired pay rate for good conduct and that his retired pay has always been calculated at the 60% rate.
- An email from the Chief of Retiree and Annuitant Services at the Coast Guard's Pay & Personnel Center, dated March 22, 2013, states that she had reviewed the applicant's retired pay and "he did receive the 10% for good conduct in the original computation."
- An email from a Retiree Pay Technician at the Pay & Personnel Center, dated May 29, 2013, explains the calculations she used to determine that the applicant was receiving retired pay at the 60% rate, rather than the 50% rate. She concluded that the "applicant has already received, and is currently receiving, a 10% increase for good conduct."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 7, 2013, the Chair mailed the applicant a copy of the views of the Coast Guard and invited him to respond within 30 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 submissions, and applicable law:

1. The Board has jurisdiction over this matter under 10 U.S.C. § 1552.
2. An application to the Board must be filed within three years after the applicant discovers the alleged error in his record.¹ Although the applicant stated that he discovered the alleged error in 2011, he received his first retired pay in 1987 and would have known and noticed at that time if his retired pay was just 50% of his active duty pay or the expected 60%. While he may have forgotten about these matters since that time and believed he was discovering an error in 2011, the Board finds that his application is untimely because the preponderance of the evidence shows that he discovered the error upon his initial receipt of retired pay in 1987.
3. Under 10 U.S.C. § 1552(b), the Board may excuse the untimeliness of an application if it is in the interest of justice to do so. In *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that to determine whether the interest of justice supports a waiver of the statute of limitations, the Board "should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review." The court further instructed that "the 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."²
4. The applicant did not explain or justify his long delay in challenging his retired pay rate, and the Board's cursory review of the merits shows that he is already receiving the 60% retired pay rate for good conduct that he is entitled to. The applicant's pay records and the calculations of the Coast Guard's pay personnel are presumptively correct.³ The applicant's evidence shows that he is entitled to the 60% retired pay rate, which the Coast Guard admits, but does not contradict the Coast Guard's claims that he has in fact been receiving retired pay at the 60% rate as a result of his good conduct since he retired in 1987.
5. Accordingly, the Board will not excuse the untimeliness of the application or waive the statute of limitations because the applicant's claim cannot prevail on the merits. The application should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

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

² *Allen v. Card*, 799 F. Supp. 158, 164-65 (D.D.C. 1992); *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

³ 33 C.F.R. § 52.24(b); *see Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (citing *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979), for the required presumption, absent evidence to the contrary, that Government officials have carried out their duties "correctly, lawfully, and in good faith.").

ORDER

The application of [REDACTED] for correction of his military record is denied.

