


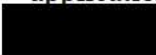
**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-052


 (Retired)

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. After receiving the applicant's completed application on December 31, 2013, the Chair docketed the application and assigned it to  to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 5, 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, a retired  asked the Board to return more than \$2,000.00 that he believes was wrongfully recouped from his retired pay following his separation from the Coast Guard. The applicant stated that according to the Pay Manual, he was entitled to receive that compensation as sea pay while he was on terminal leave leading up to his retirement, as he was still attached to the command until his last day of active duty, November 30, 2013. The applicant believes that his command correctly followed the rules in the Pay Manual and that he is therefore entitled to a refund of the money that was recouped.

SUMMARY OF THE RECORD

The applicant retired from the Coast Guard on December 1, 2013. Prior to his retirement, the applicant took terminal leave from August 18, 2013, through November 30, 2013. On August 20, 2013, the Chief of the Coast Guard's Separation Branch, by email, asked the Chief of the Compensation Division on behalf of the applicant whether members are entitled to career sea pay while on terminal leave. The Chief of the Compensation Division replied that they are not, explaining that although there was a contradiction in the Pay Manual, the Commandant had instructed the Personnel and Pay Center (PPC) to follow the rule in Figure 4-3 of the Pay Manual instead of the language in Chapter 4.B.9.f., which would be revised. The Chief of the Compensation Division stated, "the member may not receive sea pay if he takes leave in connection with his separation and has no intent to return." The applicant forwarded this email from one of his email accounts to another on December 9, 2013.

On January 7, 2014, PPC authorized a payment adjustment to withhold \$2,351.83 from the applicant's retired pay beginning in April 2014. PPC's Pay Adjustment Authorization form states that "member's pay account shows he received a special payment of \$710.83 on November 27, 2013. He was also issued a special payment of \$2,351.83 on December 18, 2013, without consideration of the payment issued on November 27, 2013. This has resulted in an overpayment of \$2,351.83."

VIEWS OF THE COAST GUARD

On June 12, 2014, the Coast Guard submitted an advisory opinion recommending that the Board deny relief in this case. The Coast Guard stated that it does not believe that payment of sea pay while on leave pending retirement from the Coast Guard is authorized by 37 U.S.C. § 305a, and that it is against Coast Guard policy and contrary to Department of Defense (DoD) and Navy policy to authorize such a payment. The Coast Guard acknowledged that while its policy does contain some ambiguity, it is the Coast Guard's intent to "terminate sea pay upon a member's departure from his unit, including when a member departs his unit on leave taken in conjunction with retirement or separation with no intent to return to the ship."

In addition to the applicable law and policy cited below, the Coast Guard also referenced various policies regarding separations. Specifically, with regard to database entries upon separation, the Coast Guard's Servicing Personnel Office (SPO) Manual states the following:

Separation Documents must be approved by the date the orders become effective, this means on the date the member begins terminal leave if taking terminal leave, not necessarily on the date of separation. By approving the separation action on the date member begins terminal leave; this allows the payroll system to stop various entitlements and prevent overpayments of Sea Pay, Cola, OHA, etc. and also allows entitlements to BAH, BAS, etc. to begin when authorized (such as leaving a ship or vacating government quarters). Payment for leave sale will not be made until the JUMPS system reflects the correct information.^[1]

Therefore, the Coast Guard concluded that under Coast Guard policy and in accordance with the DoD policy and statutory law referenced below, payment of sea pay was not authorized, and it recommended that the Board deny applicant's requested relief.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 25, 2014, the Chair of the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. The BCMR did not receive a response.

APPLICABLE LAW AND POLICY

37 U.S.C. § 305a – Special pay: career sea pay.

(a) Availability of Special Pay.— A member of a uniformed service who is entitled to basic pay is also entitled, while on sea duty, to special pay at the applicable rate under subsection (b).

¹ U.S. Coast Guard, Servicing Personnel Office (SPO) Manual, PPCINST M5231.3, pages VI-2-4 II-7-3.

(b) Rates; Maximum.— The Secretary concerned shall prescribe the monthly rates for special pay applicable to members of each armed force under the Secretary’s jurisdiction. No monthly rate may exceed \$750.

(d) Regulations.— The Secretary concerned shall prescribe regulations for the administration of this section for the armed force or armed forces under the jurisdiction of the Secretary. The entitlements under this section shall be subject to the regulations.

(e) Definition of Sea Duty.—

(1) In this section, the term “sea duty” means duty performed by a member—

(A) while permanently or temporarily assigned to a ship and—

(i) while serving on a ship the primary mission of which is accomplished while under way;

(ii) while serving as a member of the off-crew of a two-crewed submarine;

(iii) while serving as a member of a tender-class ship (with the hull classification of submarine or destroyer); or

(iv) while serving as an off-cycle crewmember of a multi-crewed ship; or

(B) while permanently or temporarily assigned to a ship and while serving on a ship the primary mission of which is normally accomplished while in port, but only during a period that the ship is away from its homeport.

Coast Guard Pay Manual. COMDTINST M7220.29B

Chapter 4.B.8. states that career sea pay “is payable to eligible members who perform duty under orders issued by competent authority subject to the conditions in figures 4-3, 4-4, and 4-5.” Figure 4-3 states that for a member assigned to permanent duty afloat, career sea pay “accrues through day of departure” from the vessel when the member “departs vessel in conjunction with separation or retirement.” Chapter 4.B.9.f. contains both conforming and contradictory statements:

When departing a vessel prior to a PCS transfer, CSEAPAY will stop on the day of departure. When departing a vessel prior to discharge, release from active duty, or retirement, CSEAPAY will stop the day of departure when utilizing permissive temporary duty and/or processing point. *CSEAPAY continues if the member remains attached to the vessel in a leave status.*

Example 1. *A member is retiring on 1 September. The member departs the vessel, which is on deployment, on 18 July and returns to a shore command or cutter’s homeport for permissive temporary duty and/or time at a processing point, in conjunction with a retirement. The member commences 60 days leave on 8 August. CSEAPAY stops on 18 July. [Emphasis added.]*

Department of Defense Financial Management Regulation 7000.14-R, Volume 7A, Chapter 18. Special Pay – Career Sea Pay. – 1801 General Provisions.

180102. Definitions—C. Sea Duty. For the purposes of entitlement to CSP and CSP-P, the term “sea duty” means duty performed by a member under orders meeting one of the following conditions:

1. While permanently assigned for duty to a ship, ship-based staff, or ship-based aviation unit and serving in a ship with a primary mission that is accomplished underway (includes ships designated as destroyer or submarine tenders). Periods when the member is on temporary duty, on leave, hospitalized, or otherwise temporarily absent under orders, not to exceed the first 30 consecutive days of each occurrence, are also counted.

Table 18-1 of the Financial Management Regulation states that career sea pay does not accrue during terminal leave.

Department of the Navy, OPNAV Instruction 7220.14

Paragraph 8 of the Navy regulation provides the following explanation about career sea pay (CSP):

30-Day Rule. A member who is receiving Category A or continuous staff CSP is entitled to continue to receive CSP during a period of authorized leave (not to include PCS leave or terminal leave), TDY, TAD, or hospitalization, or while on an operational flight, for not more than 30 consecutive days while the member is away from the vessel, provided the member clearly intends to return for duty on that vessel after the aforementioned absence ends. CSP will not be paid to members on terminal leave since there is no intent to return to the vessel.

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. Under 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22, an application to the Board must be filed within three years after the applicant discovers the alleged error or injustice. The applicant retired from the Coast Guard on November 30, 2013, and filed his BCMR application on December 30, 2013. Therefore, his application is timely.
3. The applicant is incorrect in his belief that he was entitled to sea pay while on terminal leave following his departure from the cutter. Although the language in Chapter 4.B.9.f. of the Pay Manual is ambiguous, Chapter 4.B.8. clearly states that entitlement to career sea pay is subject to the conditions in Figure 4-3, and that figure states that career sea pay accrues only through the date the member departs the vessel when the member is going on terminal leave. This rule is echoed in the Coast Guard's SPO Manual, and DoD's Financial Management Regulation and the Navy's regulations show that DoD construes the statute in the same way. These rules provide that a member's career sea pay stops when he departs his vessel to go on terminal leave. Therefore, the Board finds that the applicant has not proven by a preponderance of the evidence that the Coast Guard's recoupment of his sea pay for the time he was on terminal leave is erroneous.
4. The Pay Adjustment Authorization signed on January 7, 2014, indicates that the applicant received the overpayment as a lump sum on December 18, 2013, following his retirement and after he had already been made aware that he was not entitled to the sea pay

pursuant to Figure 4-3 of the Pay Manual. In light of these circumstances, the Coast Guard's recoupment of the sea pay does not shock the Board's sense of justice.²

5. The applicant has not proven by a preponderance of the evidence that the Coast Guard erred or committed an injustice by recouping the sea pay from him. Therefore, the Board finds that he is not entitled to the return of the recouped sea pay.

6. Accordingly, relief should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

² *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976) (stating that for the purposes of the BCMRs under 10 U.S.C. § 1552, "injustice" is "treatment by the military authorities that shocks the sense of justice but is not technically illegal.").

ORDER

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

September 5, 2014

