

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-216

██████████
██████████ (retired)

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the completed application on July 12, 2017, and assigned it to staff attorney ██████████ to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated April 13, 2018, 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 on September 1, 2017, less than two years after advancing from ██████████ first class ██████████ (E-6) to chief ██████████ (E-7), asked the Board to correct his record to show that he is entitled to retired pay as an E-7, rather than an E-6, and to award him back pay as a result of this correction. The applicant explained that the two-year obligated service requirement for the E-7 pay grade could have been waived. He stated that he was serving on an indefinite enlistment contract, and he "was never counseled or made aware of the 2 year obligation for advancement to E-7 until [he] wanted to put [his] retirement letter in." He asserted that the notes in his final transfer orders had only required one year of obligated service for acceptance of the orders,¹ which he had fulfilled when he requested retirement.

The applicant, who advanced to ██████████ E-7 on June 1, 2016, explained that he reported for duty at his last unit on July 15, 2016, in order to fill an E-7 billet. On August 3, 2016, he submitted his request to retire on September 1, 2017. In this letter the applicant wrote, "I request a waiver for the two year[s] of obligated service incurred upon advancement to E-7." He stated that he only added this line to the letter "after learning that [he] would have to fill that position for 2 years." His Commanding Officer (CO) positively endorsed the retirement letter. His request was denied,

¹ Article 1.B.67.b.(2) of the Military Assignments and Authorized Absences Manual, COMDTINST M1000.8A states with respect to transfer orders that "[p]ersonnel E-4 and above with over six years of active duty are considered to be in a career status. Unless otherwise indicated, they are required to have one year of OBLISERV remaining upon reporting to the new unit."

however, because the Coast Guard would not waive the two-year obligated service requirement. The applicant stated that he was told that the only way he could retire was if he requested a reduction in rank. He stated if he had known then what he knows now he would not have agreed to the reduction in rank, and therefore he believes that he was improperly counseled.² In support of his application he provided several documents, which are described below in the Summary of the Record.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on February 18, 1997.

On May 24, 2016, an announcement³ named personnel who would be advanced to the indicated rating and pay grade on June 1, 2016. The applicant was authorized advancement to [REDACTED] E-7. The announcement states that personnel who advanced to pay grades E-7 through E-9 “are required to obligate service prior to advancement per Art 3.A.19.d” of the Enlisted Accessions, Evaluations, and Advancements manual.⁴

On August 3, 2016, the applicant prepared a Service Retirement Request. He stated that he requested to retire on the first day of September 2017, or as soon thereafter as possible. He requested “a waiver for the two year[s] of obligated service incurred upon advancement to E-7.”

Also on August 3, 2016, the applicant’s CO forwarded and endorsed the retirement request. The CO stated that the applicant met all retirement requirements pending the approval of the two-year obligation waiver for advancement to E-7.

On September 13, 2016, the Personnel Service Center (PSC) notified the applicant that his waiver request of the two-year obligated service requirement had been denied. PSC stated that his request was “carefully considered” and it was disapproved. The applicant was informed that he could resubmit a request for retirement after he completed his obligated service for advancement to E-7 on June 1, 2018. If he wished to retire before completing two years of service as an E-7, he could submit a request to PSC “for voluntary reduction to paygrade E-6.” He was told that he would have to acknowledge on his request for retirement that he agreed to waive his rights to a highest grade held board and to retire at the paygrade of E-6. He would then receive retired pay “calculated as an E-6 in accordance with 10 USC 1406 under the final pay rules.”

On December 12, 2016, PSC authorized the applicant’s retirement effective September 1, 2017. The authorization stated that his “official record has been reviewed. [In accordance with] MILSEP 1.C.12.e. and/or 1.C.12.g., and pursuant to 14 USC 362, 14 USC 423, and 10 USC 1407(f)(2)(A), a determination has been made that your highest grade held satisfactorily is E6.” The retirement type was “Retirement After 20 Years Active Federal Service.” It was noted that the

² He does not provide any details regarding his claim that he was improperly counseled; nor does he provide details regarding what additional information he knows now versus when he was requesting retirement.

³ The Coast Guard provided a copy of this announcement with its Advisory Opinion.

⁴ Article 3.A.19.d.(1) of COMDTINST M1000.2A requires members being advanced to pay grades E-7 through E-9 to remain on active duty for two years from the date of advancement, and they must sign an extension contract to obligate that service unless they are serving on an indefinite enlistment.

applicant's record was reviewed and a determination was made that his "highest grade held satisfactorily is E6."

The applicant was retired in pay grade E-6 on September 1, 2017.

VIEWS OF THE COAST GUARD

On November 27, 2017, a Judge Advocate of the Coast Guard submitted an advisory opinion in which she adopted the findings of the Coast Guard Personnel Service Center (PSC) in a memorandum on the case and recommended that the Board deny the applicant's request.

PSC stated that the application is timely and therefore should be considered on the merits. PSC asserted that the Board should deny relief because the applicable regulations were available to the applicant and were "even referenced on his advancement announcement." The applicant's initial retirement request was denied because he had not yet met his two-year obligated service requirement, which was stated explicitly in the memorandum he received. He was instructed to either fulfill his obligated service requirement or request an earlier retirement at a lower pay grade, E-6, which is what the applicant "freely chose" to do. PSC therefore recommended that the Board deny the requested relief.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 8, 2017, the Chair sent a copy of the views of the Coast Guard to the applicant and invited him to respond within 30 days. No response was received.

APPLICABLE LAWS & REGULATIONS

Title 14 U.S.C. § 355 states, "Any enlisted member who has completed twenty years' service may, upon his own application, in the discretion of the Commandant, be retired from active service."

Title 14 U.S.C. § 362 states that any enlisted member "shall be retired from active service with the highest grade or rating held by him while on active duty in which, as determined by the Secretary, his performance of duty was satisfactory, but not lower than his permanent grade or rating."

Title 10 U.S.C. § 1407 authorizes a "high-three" retired pay base for calculating the retired pay of those who became members after September 7, 1980. Paragraph (b) states that except as stated in section (f), the retired base pay "under this section is the person's high-three year average determined under subsection (c) or (d)." Under paragraph (c), an active duty member's "retired pay base" is calculated by dividing the highest total of the member's basic pay for 36 months by 36. Paragraph (f) discusses an "[e]xception for enlisted members reduced in grade." This exception applies to members who were reduced in grade as the result of an administrative action "unless the member was subsequently promoted to a higher enlisted grade or appointed to a commissioned or warrant grade," and provides that for enlisted members reduced in grade administratively, their

retired pay base is determined under 10 U.S.C. § 1406 as if they had entered military service *before* September 7, 1980.

Title 10 U.S.C. § 1406 sets out the rules for the “retired pay base” of military members who entered service before September 7, 1980. Paragraph (e) states that Coast Guard “member’s retired pay is computed under section 423(a) of title 14 in the manner provided in that section.” Under 14 U.S.C. § 423(a), the “retired pay base” is determined by multiplying the basic pay of the member’s retired pay grade by a “retired pay multiplier determined under section 1409 for the number of years of service that may be credited to the member under section 1405 of such title.”

Under 10 U.S.C. § 1409, to calculate a member’s retired pay, the “retired pay base”—determined pursuant to § 1406 or § 1407—is multiplied by a “multiplier,” which is 2.5 times the member’s years of creditable service stated as a percentage.

Article 3.A.19.d. of the Enlisted Accessions, Evaluations, and Advancements manual, COMDTINST M1000.2A, states that “members advancing to E-7, E-8, and E-9 will be required to remain on active duty for two years from the effective date of their advancement to the new grade unless otherwise prohibited.”

Article 1.C.11.a.(1) of the Military Separations manual, COMDTINST M1000.4, states that “an enlisted member does not automatically accrue a vested right to retire when he or she chooses independently of Service needs merely by completing 20 years of active service.” Under Article 1.C.11.2.(b), a member may submit a request to retire provided that, by the requested date of retirement, they will have completed at least a year at their current duty station (if stationed in the continental United States) *and* if they will have completed the two-year obligated service requirement incurred for advancement to pay grades E-7 through E-9.

Article 1.C.12.e.(1), states that enlisted members who retire under any provisions of Title 14 of the U.S. Code retire from “active service with the highest grade or rate he or she held while on active duty in which, as Commander ... determines he or she performed duty satisfactorily, but not lower than his or her permanent grade or rate with retired pay of the grade or rate at which retired.”

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.
2. The applicant alleged that his retirement as an E-6 instead of an E-7 was erroneous and unjust. When considering allegations of error and injustice, the Board begins its analysis 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.⁵ Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”⁶

3. The applicant claimed that his retired pay grade is erroneous and unjust because he was never made aware of the two-year obligated service requirement upon his advancement to E-7 and the transfer orders he had received to fill an E-7 billet required only one year of obligated service to accept the orders. With more than six years of service, the applicant was in a “career status” and so needed only one year of obligated service to accept his transfer orders.⁷ The obligated service requirements for transfers under COMDTINST M1000.8A are not the same as the obligated service requirements for advancements under COMDTINST M1000.2A, however. Article 3.A.19.d. of COMDTINST M1000.2A states that “[m]embers advancing to E-7, E-8, and E-9 will be required to remain on active duty for *two years* from the effective date of their advancement to the new grade” (emphasis added). The announcement authorizing the applicant’s advancement to E-7 on June 1, 2016, clearly pointed out this obligated service requirement. In addition, the Board notes that the applicant requested waiver of the two-year obligated service requirement in his August 3, 2016, retirement request letter, which shows that he knew of the requirement when he initially requested retirement. The Board finds that the applicant has not proven by a preponderance of the evidence that the Coast Guard improperly imposed a two-year service requirement on the applicant’s advancement to pay grade E-7.

4. The applicant argued that the two-year obligated service requirement could have been waived and it was therefore erroneous and unjust for the Coast Guard to retire him at an E-6 as opposed to E-7. Under Article 1.C.11.2.(b) of COMDTINST M1000.4, a member should only submit a request to retire if, by the requested date of retirement, they will have completed the two-year obligated service requirement incurred for advancement to pay grades E-7 through E-9. The record shows that on August 3, 2016, the applicant requested to retire less than two years after his advancement to E-7 and requested a waiver of the two-year obligated service requirement so that he could retire on September 1, 2017, instead of June 1, 2018. His command positively endorsed this request on the same date. But PSC considered his request and denied it. Under 14 U.S.C. § 355, members are retired at the discretion of the Commandant, and the applicant has not shown that PSC erroneously or unjustly denied his request for a waiver of the obligated service requirement. Upon denying the waiver, PSC informed the applicant that he had two choices: wait to retire until June 1, 2018, when he could retire as an E-7, or waive his rights to a highest grade held board and retire as an E-6 with his retired pay calculated in accordance with 10 U.S.C. § 1406. The preponderance of the evidence shows that the applicant knowingly chose the reduction to E-6 and retired pay calculated pursuant to 10 U.S.C. § 1406 so that he could retire on September 1, 2017. Because of his decision, his “retired pay base” is the base pay of an E-6, instead of the “high-three” average (which would include months he spent in pay grade E-7) authorized under 10 U.S.C. § 1407.

⁵ 33 C.F.R. § 52.24(b).

⁶ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁷ Article 1.B.67.b.(2) of COMDTINST M1000.8A.

5. The applicant claimed that he was improperly counseled and that had he known then (in the fall of 2016) what he knew by June 2017, he would not have agreed to the reduction in rank. The applicant failed to submit any evidence of miscounseling, however, and the preponderance of the evidence shows that he accepted retirement in pay grade E-6 so that he could retire without completing two years of active duty in pay grade E-7. The Board finds that the applicant has not proven by a preponderance of the evidence that his E-6 retired pay grade is erroneous or unjust.

6. Accordingly, the applicant's request to have his retired pay grade raised from E-6 to E-7 should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

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

April 13, 2018

