

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-160

████████████████████
██████████ BM3 (former)

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on June 15, 2018, 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 19, 2019, 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 former Boatswain’s Mate who was discharged on June 17, 2017, asked the Board to correct his record by changing his records to show that he was a Seaman (SN) instead of a Fireman (FN) and that he had at least 300 days of sea duty instead of 289.

The applicant explained that after leaving the Coast Guard, he has chosen to pursue a career in the maritime industry and having his records correct is very important to obtaining various qualifications. He argued that the alleged errors constitute “a great injustice” because he worked hard while in the Coast Guard and he would like his records to properly reflect his achievements. He argued that he was addressed as an SN on all of his Coast Guard documents from the applicable timeframe. He stated that his records show that he was assigned to the engineering department as an FN while aboard the cutter he served on but that his records should reflect that he was in the deck department as an SN.

Regarding his sea duty time, the applicant stated that his records show that he was on sea duty from August 21, 2013, through June 5, 2014. He stated that this is incorrect because he went on liberty on June 6, 2014, and when he returned he “had to report for duty one last time once liberty expired for one day before departing the unit” on June 16, 2014.

In support of his allegations, the applicant provided several documents dated from January 17, 2014, to June 5, 2014, which all refer to him as “SN.” The applicant also provided two supporting letters. The first was from a Boatswain Chief (BMC) who stated that he served with the applicant from August 21, 2013, to June 16, 2014. The BMC stated that the applicant was stationed aboard the cutter until June 16, 2014, when he transferred to attend training. The BMC said he was attached to the deck department aboard the cutter with the applicant and so could attest to the fact that the applicant served as an SN and not an FN. The BMC stated that he was the applicant’s supervisor so he was happy to confirm all of this information for the applicant. The second letter was from a BM1 who stated that he served aboard the cutter with the applicant in June of 2014, and so he could confirm that the applicant was stationed aboard the cutter until June 16, 2014. The BM1 stated that he also knew that the applicant worked for the deck department.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on June 16, 2013. At basic training, the applicant received the FN rating on August 18, 2013. The Coast Guard’s database shows that he was transferred and assigned to a cutter beginning August 21, 2013. It also shows that he remained assigned and attached to the cutter until he was transferred to his next duty station on June 22, 2014, to attend BM “A” School.

A Standard Travel Order for the applicant’s transfer from the cutter to the training center where he attended BM “A” School shows that he was authorized leave from June 6, 2014, to June 19, 2014, and was directed to travel from June 20 to June 22, 2014, and to report for duty at the training center no later than 1600 hours on June 22, 2014.

The applicant’s Leave and Earnings Statement (LES) for the month of July 2014 states, “career sea pay stopped 05JUN14.” A deduction of \$41.67 was made for the career sea pay he had received from June 6 to 30, 2014. The LES further states that the applicant was charged for fourteen days of regular leave from June 6, 2014, through June 19, 2014.

On September 26, 2014, the applicant became a BM3 after completing training.

The applicant was discharged at the end of his enlistment on June 18, 2017. His DD-214 is not in the record before the Board. Upon inquiry, the BCMR staff was advised that no DD-214 was available in the applicant’s record.

A Transcript of Sea Service prepared on April 4, 2018, states that the applicant served aboard the cutter from August 21, 2013, to June 5, 2014, a total of 289 days.

VIEWS OF THE COAST GUARD

On November 13, 2018, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the Board deny relief in this case. She stated that the Coast Guard policy for enlisted members to change their ratings requires that they “make a letter application to their commanding officer” to do so.¹ The JAG stated that there was no evidence

¹ Enlisted, Evaluations, and Advancements manual, COMDTINST M1000.2B, Article 3.25.b.(1).

that the applicant followed the proper policy to change his rate from FN to SN, so he retained the rating of FN until he graduated from training and became a BM1.

Regarding the applicant's request to change his sea service, the JAG stated that Coast Guard policy specifically states that career sea pay and career sea time accrual stops on the day after the member leaves the vessel and "will not resume for any short returns to the vessel."² The JAG argued that there was no evidence to support that applicant's claim that he was required to report to the vessel on June 16, 2014, and even if he was, the short return would not be cause for sea time accrual to resume. The JAG therefore recommended that the Board deny relief and in doing so, she adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC stated that the application is timely and should be considered on its merits. PSC stated that the applicant was "listed as FN upon graduation from basic training" and this was not changed until he received the BM1 rating. PSC stated that according to the applicant's records he was attached to the cutter from August 21, 2013, to June 5, 2014, for a total of 289 days and not for 300 days. PSC therefore recommended that the Board deny relief.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 4, 2018, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. No response was received.

APPLICABLE LAW AND POLICY

The Enlistments, Evaluations, and Advancements manual in effect at the time, COMDTINST M1000.2, Article 3.A.24.b. states that member "desiring a change in rate may make a letter application to their commanding officer for the same."

Career sea pay is authorized for sea duty under 37 U.S.C. § 305a. Paragraph (d) authorizes the Secretary concerned to prescribe regulations for the administration of career sea pay. Paragraph (e) defines "sea duty" to include being permanently or temporarily assigned to a ship "the primary mission of which is accomplished while under way."

Article 4.B.2. of the Coast Guard Pay Manual in effect in 2014, COMDTINST M7220.29B, defines "career sea pay" (CSEAPAY) as "special pay authorized for all members in pay grades E1 through O6. Eligible members must be permanently or temporarily assigned for duty to a vessel ... pursuant to orders issued by competent authority and the vessels/units primary mission must be accomplished underway."

Article 4.B.6. of the Pay Manual states that cumulative sea duty accrues for career sea pay purposes if the member is entitled to both basic pay and career sea pay.

Article 4.B.9.f. of the Pay Manual states the following:

² Coast Guard Pay Manual, COMDTINST M7220.29.C, Article 8.i. (issued on June 19, 2017).

f. 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.

Example 2. A member is being discharged on 19 May. The vessel is moored in its homeport or is underway. The member commences 14 days leave on 6 May, in conjunction with the discharge. CSEAPAY continues through 19 May since the member is still attached to the cutter and in a leave status.

Figure 4-3 in the Pay Manual states that CSEAPAY starts when a member reports for permanent duty aboard an eligible vessel and stops when the member departs from permanent duty aboard the vessel. When the member is on leave, career sea pay "accrues for the period of leave if otherwise entitled." If a member receives temporary orders to a shore unit, career sea pay "accrues for 30 days past the date of the departure" but then stops. Note 2 to Figure 4-3 states that "[m]embers are entitled to career sea pay and time for all periods of leave, provided the member was entitled to career sea pay upon commencement of leave."

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.³

2. The applicant alleged that his FN rating and his sea service time in his military record are 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.⁴ 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."⁵

3. The applicant asked that his records be changed to reflect that he was an SN instead of an FN. However, his records indicate that he was designated as an FN in basic training. Coast Guard policy states that if a member wishes to change his rating, he must "make a letter application

³ *Detweiler v. Pena*, 38 F.3d 591, 598 (D.C. Cir. 1994) (holding that, under § 205 of the Soldiers' and Sailors' Civil Relief Act of 1940, the BCMR's three-year limitations period under 10 U.S.C. § 1552(b) is tolled during a member's active duty service).

⁴ 33 C.F.R. § 52.24(b).

⁵ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

to their commanding officer.”⁶ There is no evidence in the applicant’s record that he submitted such a letter to his commanding officer. Although there is evidence in his record that he was referred to as an SN in several documents while assigned to the cutter, that does not change the fact that he was originally designated as an FN and his rating was not officially changed until he advanced to BM3. Therefore, the Board finds that the applicant has failed to prove by a preponderance of the evidence that an error or injustice exists in this regard.

4. The applicant asked the Board to correct his record to show that he served at least 300 days of sea duty, instead of 289. He complained that he was credited with only 289 days of sea duty, from August 21, 2013, to June 5, 2014, because he was not properly credited with sea duty while he was on leave from the cutter from June 6 to 19, 2014. A member is credited with sea duty “if the member is entitled to basic pay and CSEAPAY [career sea pay].”⁷ Therefore, to determine whether the applicant should be credited with sea duty while he was on leave, the Board must determine whether he was entitled to CSEAPAY while he was on leave. The applicant claimed that he was assigned to the cutter but on leave from June 6 to 19, 2014, and that he reported aboard his cutter briefly on June 20, 2014, before traveling to his new duty station at the training center. The evidence of record shows the following:

- The Coast Guard’s database shows that he was transferred and assigned to the cutter, and so entitled to CSEAPAY, beginning on August 21, 2013, and remained assigned to the cutter until he was transferred to the training center to attend BM “A” School on June 22, 2014.
- The applicant’s transfer orders show that he was authorized leave from June 6 to 19, 2014; authorized travel time from June 20 to 22, 2014; and ordered to report for duty at the training center no later than 1600 hours on June 22, 2014.
- The applicant’s LES for July 2014 shows that his CSEAPAY was stopped retroactively as of June 4, 2014, and a deduction of \$41.67 was made for the CSEAPAY he had received from June 6 to 30, 2014. In addition, he was charged for 14 days of leave from June 6 to 19, 2014.
- A Transcript of Sea Service prepared in 2018 after his discharge shows that he was credited with 289 days of sea duty from August 21, 2013, to June 5, 2014.

Therefore, the preponderance of the evidence shows that the applicant was still assigned to the cutter while on leave from June 6 to 19, 2014, and he departed the cutter on June 20, 2014, for travel to his new permanent duty station, where he reported for duty on June 22, 2014.

5. In recommending denial of this request, the Coast Guard cited the Pay Manual currently in effect, COMDTINST M7220.29C, which states that career sea pay and career sea time accrual stops on the day after the member departs from the vessel and “will not resume for any short returns to the vessel.”⁸ Thus, under the current policy, the applicant would not accrue career sea time while he was on leave even if he briefly reported for duty following his leave and before

⁶ Enlistments, Evaluations, and Advancements manual, COMDTINST M1000.2, Article 3.A.24.b.

⁷ Coast Guard Pay Manual, COMDTINST M7220.29.B, Article 4.B.6. (issued on February 10, 2012).

⁸ Coast Guard Pay Manual, COMDTINST M7220.29.C, Article 8.i. (issued on June 19, 2017).

traveling to his new unit. COMDTINST M7220.29C was promulgated on June 19, 2017, however, after the applicant's discharge and three years after the period at issue. The Pay Manual in effect in June 2014, when the applicant went on leave from the cutter, was COMDTINST M7220.29B, which states the following: "When departing a vessel prior to a PCS transfer, CSEAPAY [career sea pay] will stop on the day of departure. . . . CSEAPAY continues if the member remains attached to the vessel in a leave status."⁹ Likewise, Figure 4-3 in COMDTINST M7220.29B states that CSEAPAY stops when the member departs from permanent duty aboard the vessel but if the member is on leave, career sea pay "accrues for the period of leave if otherwise entitled." Similarly, if a member receives temporary orders to a shore unit, CSEAPAY "accrues for 30 days past the date of the departure" but then stops according to Figure 4-3. Note 2 to Figure 4-3 states that "[m]embers are entitled to career sea pay and time for all periods of leave, provided the member was entitled to career sea pay upon commencement of leave." Therefore, under COMDTINST M7220.29B, a member's entitlement to CSEAPAY continued if the member remained assigned to the vessel in a leave status. Because the applicant's records consistently show that he was still assigned to the cutter while on leave from June 6 to 19, 2014, in accordance with COMDTINST M7220.29B, the Board finds that he was entitled to both basic pay and CSEAPAY while on leave and was therefore eligible for sea duty accrual through June 19, 2014.¹⁰

6. Accordingly, the applicant has proven by a preponderance of the evidence that he was entitled to CSEAPAY and credit for sea duty from August 21, 2013, through June 19, 2014 (instead of June 5, 2014). Partial relief should be granted by correcting his record, including his Transcript of Sea Service and DD-214, to reflect sea duty and entitlement to CSEAPAY from August 21, 2013, through June 19, 2014. Because he is being credited with additional sea duty, he is also entitled to CSEAPAY for that period.¹¹ In addition, if the Coast Guard has no DD-214 for the applicant (as stated in the advisory opinion), it should create one and enter it in his record.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁹ Coast Guard Pay Manual, COMDTINST M7220.29.B, Article 4.B.9 f.

¹⁰ *Id.*, Article 4.B.6.

¹¹ 10 U.S.C. § 1552©(1); *DeBow v. United States*, 193 Ct. Cl. 499, 504 (1970), cert. denied, 404 U.S. 846 (1971); see *Bonen v. United States*, 229 Ct. Cl. 144, 149 (1981) ("The 'half-a-loaf' doctrine normally applies where a corrections board grants plaintiff's claim, but stops short of awarding the full appropriate relief requested by plaintiff. Failure of the board to grant full relief where it is mandated by the records change results in 'a new cause of action' or 'continuing' claim' which revives the statute of limitations.") (citing *Denton v. United States*, 204 Ct. Cl. 188, 195, cert. denied, 421 U.S. 963 (1975)).

ORDER

The application of former BM3 [REDACTED], USCG, for correction of his military record is granted in part as follows:

The Coast Guard shall correct his record, including his Transcript of Sea Service and DD-214, to reflect sea service and entitlement to career sea pay from August 21, 2013, through June 19, 2014. If no DD-214 exists in his record, the Coast Guard shall prepare and enter one in his record reflecting this correction. The Coast Guard shall pay him any amount due as a result of this correction. No other relief is granted.

April 19, 2019

