

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2013-007



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 October 12, 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 July 12, 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, a [REDACTED] in the Reserve, asked the Board to correct his expected loss date from June 30, 2015, to June 30, 2020. He explained that he was first commissioned through the Army ROTC as a 2nd lieutenant (O-1) on May 12, 1984. He served on inactive duty in the National Guard and Army Reserve until January 24, 1990, when he resigned his Army commission to enlist in the Coast Guard Reserve as a seaman apprentice and attend Officer Candidate School. He was discharged as an enlisted member on May 24, 1990, and commissioned an ensign (O-1) in the Coast Guard Reserve on May 25, 1990.

The applicant stated that under Chapter 8.A.7¹ of the Reserve Policy Manual, "[t]he total commissioned service of an officer who has served continuously in the Reserve following appointment in the grade of ensign shall be computed from the date on which that appointment was accepted" and officers "will normally be removed on 30 June immediately following completion of 30 years total commissioned service." Therefore, he argued, his total commissioned service (TCS) should be computed from May 25, 1990, the day he accepted his appointment as an ensign, and his expected loss dated in the Coast Guard's Direct Access database should be June 30, 2020. However, the database erroneously shows an expected loss date of June 30, 2015.

¹ The applicant actually cited Chapter 8.A.6. from an outdated edition of the Reserve Policy Manual. Due to a recent revision to that manual, the applicable provision now appears in Chapter 8.A.7.

The applicant noted that the Board has previously corrected an officer's record in a similar way in BCMR Docket No. 2997-153. The applicant in that case had been commissioned as an ensign in the regular active duty Coast Guard, was promoted to lieutenant junior grade, and served six years before he was separated and accepted a commission in the Coast Guard Reserve as an ensign. Based on the recommendation of the Coast Guard in that case, the Board corrected that applicant's TCS date to the date he was commissioned an ensign in the Reserve, rather than the date he was commissioned an ensign in the regular Coast Guard.

The applicant stated that he discovered the alleged error in his record on March 5, 2012.

APPLICABLE LAW

Title 14 U.S.C. § 740 concerns the mandatory separation of Reserve officers who have failed twice of selection for promotion and states the following:

(a) The Secretary--

(1) may remove from an active status a Reserve officer who has twice failed of selection to the next higher grade; and

(2) shall remove from an active status a Reserve officer serving in the grade of captain who has completed thirty years of total commissioned service and whose name is not carried on an approved list of selectees for promotion to the grade of rear admiral (lower half).

(b) A Reserve officer who has twice failed of selection to the next higher grade and who is not removed from an active status under subsection (a)(1) of this section shall be retained for the period prescribed by the Secretary.

• • •

(d) For the purpose of this section, the total commissioned service of an officer who has served continuously in the Reserve following appointment in the grade of ensign shall be computed from the date on which that appointment to the Reserve was accepted. A Reserve officer initially appointed in a grade above ensign ...

Chapter 8.A.7.a. of the Reserve Policy Manual states the following:

All commissioned officers in pay grades O-6 and below shall be removed from an active status after completion of 30 years total commissioned service, if they are not carried on an approved list of selectees for promotion to the grade of rear admiral (lower half).

(1) The total commissioned service of an officer who has served continuously in the Reserve following appointment in the grade of ensign shall be computed from the date on which that appointment was accepted.

• • •

(3) The TCS Years column of the Register of Reserve Officers, COMDTINST M1427.2 (series) is used as a guide for determining when officers will be removed from an active status. They will normally be removed on 30 June immediately following completion of 30 years total commissioned service.

VIEWS OF THE COAST GUARD

On April 8, 2013, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant relief in this case.

The JAG stated that under 14 U.S.C. § 740(d), “the total commissioned service of an officer who has served continuously in the Reserve following appointment in the grade of ensign shall be computed from the date on which that appointment *to the Reserve* was accepted” (emphasis added) and the statute is silent on whether the calculation should change if the officer has accepted successive Reserve commissions in the grade of ensign or its equivalent (O-1). The JAG argued that the plain reading of the statute indicates that TCS is calculated from the date a Coast Guard Reserve Officer accepts a commission as an Ensign in the Coast Guard Reserve, exclusive of any previous military service in the regular Coast Guard or any other military service. The JAG noted that this interpretation is consistent with the fact that Congress just recently added the phrase “to the Reserve” to § 740(d).²

Therefore, the JAG recommended that the Board grant relief by ordering the Coast Guard to calculate the applicant’s TCS from the date he accepted his commission as an ensign in the Coast Guard Reserve, May 25, 1990, so that his expected loss date shall be June 30, 2020.

APPLICANT’S RESPONSES TO THE VIEWS OF THE COAST GUARD

On June 3, 2013, the applicant responded to the JAG’s advisory opinion. He agreed with the recommendation and noted an error about how his Army and National Guard service are recorded in his Coast Guard record that is not germane to the request for relief.

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 preponderance of the evidence shows that the application was timely filed within three years of the applicant’s discovery of the error in his record.³

2. The applicant alleged that his expected loss date in the Coast Guard’s database is erroneous and should be corrected to June 30, 2020. When considering allegations of error and injustice, 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.⁴ Absent evidence to the contrary, the Board presumes that Coast Guard officials and

² Coast Guard Maritime and Transportation Act of 2012, Pub. L. No. 112-113, sec. 217 (2012).

³ 10 U.S.C. § 1552(b).

⁴ 33 C.F.R. § 52.24(b).

other Government employees have carried out their duties “correctly, lawfully, and in good faith.”⁵

3. The Board agrees with the JAG that the phrase “that appointment to the Reserve” in 14 U.S.C. § 740(d) appears to refer to the officer’s appointment as an ensign to the Coast Guard Reserve and does not appear to contemplate a prior appointment as an ensign in any other Reserve or Regular military service. Although the exclusion of the applicant’s prior service as a commissioned officer in the Army Reserve and National Guard in the calculation of his TCS is counterintuitive, the Board will accept the Coast Guard’s interpretation of the statute because of the language used therein and the lack of any contrary information.⁶

4. The applicant has proved by a preponderance of the evidence that his TCS should be calculated from May 25, 1990, the date he accepted an appointment as an ensign in the Coast Guard Reserve. Because the applicant does not turn 60 years of age until 2024, he should be eligible to serve in the active Reserve until June 30, 2020.⁷ Therefore, in accordance with 14 U.S.C. § 740(a)(2) and Chapter 8.A.7.a.(3) of the Reserve Policy Manual, his expected loss dated in the Direct Access database should be corrected to June 30, 2020.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

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).

⁶ See *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 866 (1984) (holding that “[w]hen a challenge to an agency construction of a statutory provision, fairly conceptualized, really centers on the wisdom of the agency’s policy, rather than whether it is a reasonable choice within a gap left open by Congress, the challenge must fail”).

⁷ See 14 U.S.C. § 742 (maximum ages for retention in an active status); Reserve Policy Manual, Chap. 8.A.6.

ORDER

The application of [REDACTED] USCGR, for correction of his military record is granted. The Coast Guard shall calculate his total commissioned service from the date of his commission in the Coast Guard Reserve on May 25, 1990, and so shall correct the “expected loss date” in his record to June 30, 2020.

