


DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of  
Coast Guard Record of:

BCMR Docket  
No. 1997-90

FINAL DECISION

 Deputy Chairman:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14, United States Code. It was commenced on March 24, 1997, upon the BCMR's docketing of the applicant's request.

This final decision, dated May XX, 1999, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, a former aviation machinist's mate third class (AD3; pay grade E-4), asked the Board to correct his record to show that he retired from the Coast Guard.

The applicant was honorably discharged from the Coast Guard on June 30, 1995, after serving 17 years, 11 months and 4 days on active duty. The applicant received an honorable discharge by reason of convenience of the government with a JBC (member has attained the maximum service or time in grade) and a RE-3R reenlistment code.

The applicant stated that he was forced out of the Coast Guard on June 30, 1995, due to cut-backs in personnel. He stated that 6 months after his discharge, the Coast Guard offered early retirement pursuant to the Temporary Early Retirement Authority (TERA).

**Views of the Coast Guard**

On March 24, 1999, the Board received comments on this case from the Chief Counsel of the Coast Guard. The Chief Counsel recommended that the Board deny relief in this case.

The Chief Counsel stated that the applicant was discharged from the Coast Guard under the High Year Tenure (HYT) policy. HYT policy establishes limits on the amount of time an active duty enlisted member can remain at each pay grade. It established professional growth points (PGP) for each enlisted grade including a PGP for the applicant's grade of E-4 at 7 years active Coast Guard service or 10 years active military service. COMDTINST 1040.10. The Chief Counsel stated that at the time of

the applicant's discharge he had held the pay grade of E-4 for 11 years. The Chief Counsel stated that the applicant was approved for involuntary separation under the HYT policy in February 1995.

The Chief Counsel stated that the applicant was not eligible for retirement under the Temporary Early Retirement Authority (TERA). The Chief Counsel stated that the purpose of the TERA legislation was to provide the Coast Guard with a "force management tool with which to effect the drawdown of military forces through Fiscal Year 1999." Pub. L. No. 102-484 § 4403(a).

The Chief Counsel stated that although TERA was authorized to be used by the Coast Guard in October 1994, it was up to the Commandant to decide when to use it. The Commandant implemented TERA in January 1996, several months after the applicant's discharge. It was not made retroactive.

The Chief Counsel stated that when the Coast Guard introduced its TERA program through ALCOAST 00/96, it specifically stated "Service need will determine whether individual applications for early retirement are accepted." The Chief Counsel stated that the sole criterion for granting retirements under TERA was to achieve personnel reductions. The Chief Counsel concluded that the applicant was not eligible to retire under TERA because TERA retirement eligibility is determined by Service need, and the Coast Guard determined that members leaving the service for another reason were not eligible. He argued that neither the TERA statute, nor the implementing policy, provide any member an entitlement or "right" to an early retirement.

Attached to the Chief Counsel's comments was a memorandum from the Commander, Coast Guard Personnel Command (CGPC) that contained the following history of the applicant's Coast Guard career:

- 28 Mar 83    The applicant enlisted in the Coast Guard for four years. He was advanced to AD3 on 22 Jun 84.
- 27 Mar 87    The applicant reenlisted for four years as an AD3.
- 27 Mar 91    The applicant reenlisted for four years as an AD3.
- 14 Feb 95    High Year Tenure separation was approved for the applicant.
- 23 Mar 95    The applicant extended for four months as an AD3. His new expiration of enlistment was 26 Jul 95.
- 30 Jun 95    The applicant was honorably discharged from the Coast Guard.

### Additional Information

In January 1996, the Commandant issued ALCOAST 007/96 which implemented the provisions of TERA. The Commandant stated that the existing programs had been insufficient to meet the Coast Guard's workforce reduction targets. He further stated that "to help meet our workforce targets, we now offer TERA, a voluntary program allowing military personnel the opportunity to retire with 15 to 19 years of active service." The ALCOAST did not contain a provision for retroactively.

### HIGH YEAR TENURE REGULATION

The High Year Tenure instruction (COMDTINST 1040.10), which was published on November 15, 1993, is a tool to manage the enlisted personnel force of the Coast Guard. It limits regular enlisted service to a maximum of 30 years of active service, and it sets professional growth points (PGP), the maximum time in service for each grade, for pay grades E-4 through E-9.

Subsection 2.a. of COMDTINST 1040.10 contains the following provision: "Professional Growth Points are: . . . (4) E-4 - 7 years active Coast Guard service or 10 years active military service. . . ."

Subsection 1.d. states the following: "Implementation. In light of the significance of the changes which HYT introduces, a two-year implementation period has been prescribed. This will be retroactive to 1 July 1993 and extend through 30 June 1995. HYT will be fully effective on 1 July 1995. Effective 1 July 1995, everyone (all pay grades) who does not conform to HYT's PGP or has over 30 years of active service, and does not have an authorized waiver, will be separated or retired."

Subsection 3. states the following:

- a. Members serving beyond their PGP on 1 July 1993 will be allowed to remain on active duty until 30 June 1995. If they have not achieved their PGP within this time frame, they will be denied the opportunity to reenlist/extend and subsequently separated. Personnel with 20 or more years active service may request retirement in lieu of discharge.
- b. Members who exceed their PGP during the implementation period will be separated no later than 30 June 1995.
- c. Members who advance during the implementation period will be allowed to reenlist/extend within the terms of their new PGP's.

### OTHER APPLICABLE REGULATIONS AND LAWS

10 U.S.C. § 1293 (note) (TERA) states in relevant part:

"(a) Purpose. The purpose of this section is to provide the Secretary of Defense a temporary additional force management tool with which to effect the drawdown of military forces through 1995.

"(b) Retirement for 15 to 20 years of service. (1) During the active force drawdown period, the Secretary of the Army may -- . . .

an "(B) apply the provisions of section 3914 of . . . title [10], United States Code, to enlisted member with at least 15 but less than 20 years of service by substituting 'at least 15 years' for 'at least 20 years' . . . .

"(d) Regulations. The Secretary of each military department may prescribe regulations and policies regarding the criteria for eligibility for early retirement by reason of eligibility pursuant to this sections and for the approval of application for such retirement. Such criteria may include factors such as grade, years of service, and skill. . . ."

Congress extended the provisions of TERA to the Coast Guard through 542 (d) of the National Defense Authorization Act of FY 1995, Pub. L. 103-337 (Oct. 5, 1994). This provision states that: "(Public Law 102-484; 106 Stat. 2702; 10 U.S.C. 1293 note) shall apply to the Coast Guard in the same manner and to the same extent as that provision applies to the Department of Defense. The Secretary of Transportation shall implement the provisions of that sections with respect to the Coast Guard and apply the applicable provisions of title 14, United States Code, relating to retirement of Coast Guard Personnel."

### 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 of this matter pursuant to section 1552 of title 10, United States Code. The application was timely.

2. The applicant was properly discharged pursuant to the HYT policy, which was announced by message in July 1993 and published on November 15, 1993 as COMDTINST 1040.10. It notified all enlisted personnel that the Commandant had established the maximum time in service for each grade, from pay grade E-4 through E-9. The applicant was discharged from the Coast Guard because he had attained the

maximum time in grade allowed for an E-4 under the Coast Guard's HYT policy. At time of his discharge, he had been an E-4 for approximately 11 years. The maximum time allowed to remain in this pay grade under the HYT policy was 10 years. The applicant has not established an error or injustice in the application of the HYT policy in his case.

3. The applicant was not eligible for TERA. Although TERA was authorized for use by the Coast Guard in October 1994, it was discretionary with the Commandant when and how to use it. The Commandant implemented TERA in January 1996, in an effort to meet the Coast Guard's workforce reduction targets. The applicant had been discharged for some six months when TERA was implemented. The ALCOAST, which implemented TERA, did not contain a provision for retroactively.

4. Additionally, it would not have been necessary for the Coast Guard to offer the applicant early retirement as an inducement to leave active duty, since he could be discharged under the HYT policy. The Board notes the following comment by the Commandant in ALCOAST 007/96: "[The existing voluntary programs] are not enough to meet our workforce reduction targets. To help meet our work force targets, we now offer TERA. . . ."

5. The applicant did not have 20 years of service at the time of his discharge, nor had the Commandant implemented the provisions of TERA at that time. Therefore, the applicant was not eligible for retirement under any law at the time of his discharge from the Coast Guard.

6. The applicant has failed to prove an error or injustice in this case. Accordingly, his request should be denied.

ORDER

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

