

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 1998-092

FINAL DECISION

 Chairman:

This is a proceeding under the provisions of section 1552 of title 10, and under section 425 of title 14, United States Code. It was commenced on July 1, 1998, upon the Board's receipt of the applicant's request for correction of his military record.

The final decision, dated June 10, 1999, is signed by the three duly appointed members who were designated to serve as the Board in this case.

REQUEST FOR RELIEF

The applicant enlisted in the active duty Coast Guard on January 13, 1960. February 14, 1975. He retired from the Coast Guard as a BM1 at paygrade E-6, on July 1, 1995.

The applicant alleged that he had earned and been granted advancement to paygrade E-7. He further alleged that he was in fact advanced to E-7. He alleged that he wanted his records to reflect his retirement at the highest pay grade that he held while on active duty which he alleged was chief petty officer (E-7)). He alleged that he was told that he would have to accept a reduction to paygrade E-6 in order to remain on active duty, but that he would "be retired as an E-7."

According to the applicant, he accepted reduction to E-6. He changed his rate from Port Securityman to Boatswains' Mate, and he was retired at pay grade E-6 rather than E-7. He claimed that an "injustice was committed when [he] was not retired in paygrade E-7, the highest paygrade [he] held while on active duty."

Summary of Evidence

On January 4, 1973, a memo was sent from the Commandant to the applicant regarding his eligibility for advancement to Pay Grade E-7. The memo listed the documentation that was needed by a date certain if advancement to E-7 was to be possible

On February 13, 1973, documents were received by the applicant stating that he was qualified for advancement to PSC (E-7) in the CG Ready Reserve. They were sent to the applicant's commanding officer as "documents for eligibility for advancement to pay grade E-7."

On July 1, 1995, the applicant was a retired PS1/E-6 in the Coast Guard Reserves. He did not submit any evidence that he was ever advanced to paygrade E-7 or any evidence or regulation that he could retire at paygrade E-7 if he accepted an administrative reduction to paygrade E-6.

VIEWS OF THE COAST GUARD

On April 8, 1999, the Chief Counsel of the Coast Guard recommended denial of relief in the present case.

The applicant alleged that he was advanced to E-7, and that his service and pay records should reflect retirement in that pay grade, because it was the highest pay grade at which he had served.

There is no evidence, according to the Chief Counsel, however, that the applicant was ever advanced to E-7. As a result, the applicant failed to meet his burden of proof to show that an error or injustice was committed. The Chief Counsel made the following statement:

[T]he applicant has failed to produce any evidence that he was authorized advancement to the grade of E-7. . . . Since the Applicant never served as an E-7, there is no error in his record, which properly showed him retired as an E-6.

The Commander, Coast Guard Personnel Command (CGPC) said that "As for the member's claim that he was promised retirement as an E-7, this can not even be considered given the fact that the member was never advanced to E-7." According to CGPC, no CO is authorized "to promise retirement at a specific pay grade in lieu of actual advancement."

In September 1972, the applicant took the servicewide examination for PSC

E-7. He was notified that he was qualified for further consideration (1/73) and he submitted further documentation (7/73). He was never, however, awarded advancement to E-7. Instead, he was taken to Mast and found to have been AWOL (away without approved leave). He was awarded non-judicial punishment (NJP) as a result of violation of Article 86, UCMJ. On March 22, 1999, the Commander of the Coast Guard Personnel Command (CGPC) stated that the applicant "was afforded ample opportunity to advance to E-7/BMC while on active duty (17 years) and that this time was marked by several periods of ineligibility due to disciplinary action."

The Chief Counsel also argued that the doctrine of laches bars this claim. The alleged error occurred in 1973. The Chief Counsel said that "the Board should decline to grant the requested relief based upon the equitable doctrine of laches." The Chief Counsel said the applicant took no action to correct the alleged error, but instead waited 25 years to challenge it before the BCMR; a claim for relief is barred under the equitable doctrine of laches when an unexcused delay by the applicant causes substantial prejudice to the government.

APPLICANT'S RESPONSE

On or about April 8, 1999, the Board sent the applicant a copy of the views of the Coast Guard in this case, and it invited him to comment on those views within 15 days. On April 21, 1999, the applicant requested a 30 day "continuance in order to adequately respond." The BCMR granted the request for an extension and responded as follows: "Your response is now due May 16, 1999." No response was received from the applicant by that date.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the submissions of the applicant and the Coast Guard, the military record of the applicant, and applicable law.

1. The Board has jurisdiction of this case pursuant to 10 U.S.C. §1552.
2. The application was submitted timely (within three years of discharge, pursuant to 10 U.S.C. §1552(b)). He retired on July 1, 1995; the application was submitted July 1, 1998.
3. The applicant claimed that he was entitled to be retired at pay grade E-7. The applicant was retired at paygrade E-6 on July 1, 1995.
4. There is no evidence in the applicant's military record to support his contention that he was advanced to E-7.

Final Decision - BCMR No. 1998-092

4

5. There was no evidence that the applicant was advanced to E-7, or that there was any error in his record. His record showed that he was retired as an E-6.

6. The applicant has not established that the Coast Guard committed any error or injustice in retiring him as paygrade E-6. It is therefore unnecessary to make a finding as to the alleged defense of laches.

7. Accordingly, the application should be denied.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application to correct the military record of former [REDACTED]
[REDACTED] is denied.

