

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 1999-076

FINAL DECISION

Deputy Chairman:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14, of the United States Code. It was commenced on March 4, 1999, upon the BCMR's docketing of the applicant's request. The applicant's application was not complete until July 28, 1999, when the Board received the applicant's military record.

This final decision, dated April 13, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, a former [REDACTED] pay grade E-5) in the Coast Guard Reserve, asked the Board to correct his record to grant him Honorary Retired Status (RET-3) in the Reserve.

The applicant served in the Reserve from December 18, 1981, until December 17, 1991, for a total of ten years. He was honorably discharged for the last time on December 17, 1991.

The applicant stated that he was recently informed by a colleague and by an article in a magazine that he should have been granted Honorary Retired Status (RET3) rather than discharged in 1991. He stated that he was not aware of the RET-3 status prior to his discharge.

Views of the Coast Guard

On March 22, 2000, the Board received an advisory opinion from the Chief Counsel of the Coast Guard. The Chief Counsel stated that he would have no objection to the granting of relief, since the requested correction would not bring any tangible benefit to the applicant.

The Chief Counsel stated that at the time of the applicant's discharge, Article 12.C.6. of the Reserve Administration and Training Manual authorized commands to place eligible reservists in a Honorary Retired Status, if they had attained the age of 37, had completed a minimum of 8 years of service credible toward retirement under 10 U.S.C. §§ 1331-1337, and had requested such status in writing. The Chief Counsel stated that the applicant met those requirements, except that he did not submit a written request to be placed in a Honorary Retired Status.

The Chief Counsel stated that after the applicant's 1991 discharge, the 1995 National Defense Authorization Act eliminated all benefits derived from RET-3 status, including identification cards and certificates. He stated that even in 1991 when the applicant was discharged, RET-3 status carried no special benefit except the honorary designation, "USCGR, Retired."

Applicant's Reply to the Views of the Coast Guard

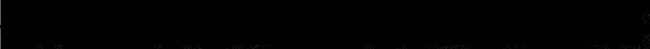
On March 30, 2000, the applicant stated that he had no objection to the Coast Guard's recommendation.

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 untimely.
2. To be timely, an application for correction of a military record must be submitted within three years after the alleged error or injustice is discovered or should have been discovered. See 33 CFR 52.22. The Board may still consider the application on the merits, however, if it finds it is in the interest of justice to do so. See Allen v. Card, 799 F. Supp. 158 (D.D.C. 1992).
3. The applicant stated that he only recently discovered the error when it was called to his attention by a colleague and by a magazine article. He stated that he was unaware of the RET-3 status at the time of his discharge. The lack of knowledge alone is not a persuasive reason for waiving the statute of limitations. However, in addition to the reasons for the delay, the potential for success on the merits should be considered in deciding whether to waive the statute of limitations.
4. With respect to the merits, the Coast Guard stated that the applicant was eligible for the Honorary Retired Status in 1991, if he had requested it in writing. The Board believes that if the applicant had been aware of the Honorary Retired Status in 1991, he would have requested it. In addition, the Chief Counsel stated that the Coast Guard would have no objection to a grant of relief.
5. Notwithstanding the applicant's lack of a persuasive reason for not filing his application sooner, the Board finds that his application has strong merit. Therefore, the Board finds it in the interest of justice to waive the statute of limitations in this case and to grant relief.
6. Accordingly, the applicant's request for relief should be granted.

ORDER

The application of former  USCGR, for correction of his military record is granted. His record shall be corrected to show that he was not discharged on December 17, 1991, but was placed in the Honorary Retired Status (RET-3) on that date.

