

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction
of Coast Guard Record of:



BCMR Docket
No. 2000-117

FINAL DECISION



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. The proceeding was docketed on April 20, 2000, upon the Board's receipt of a complete application for correction of the applicant's military record.

This final decision, dated February 28, 2001, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant asked the Board to correct his record to show that he entered the delayed entry program on September 8, 1980, and that he elected the full 50% military retirement system.

On July 7, 1999, the applicant submitted this request for relief to the Coast Guard Personnel Command (CGPC). On September 2, 1999, the CGPC stated that this request cannot be acted on by the CGPC, but it should be submitted to the Personnel Records Review Board (PRRB). On April 6, 2000, the request was submitted to the PRRB. On April 18, 2000, the PRRB forwarded it to the BCMR for appropriate action on the ground that the PRRB lacks jurisdiction over applications that exceed its one-year time restriction.

APPLICANT'S ALLEGATIONS

The applicant asked the Coast Guard to correct his military records to show that he entered the Coast Guard's delayed entry program prior to or on September 8, 1980. His military record showed that he actually entered military service 50 days after that date, on October 27, 1980.

The applicant alleged that he was entitled to be counseled by his recruiter on all the "personal benefits" to which he was entitled. He alleged that the Coast Guard committed an injustice when his recruiter did not fully explain all of his

military benefits. If the applicant had entered the Coast Guard on or before September 8, 1980, the military retirement law would have made him eligible for "the full 50% of base pay retirement pay benefits," instead of the high three retirement pay benefits.

According to the applicant, the delayed entry program was offered him but he "declined" it. He alleged that he "was not notified that [his] decision to not participate in the delayed entry program would lead to loss of benefits." He estimates that the benefit loss from not having joined on or before September 8, 1980 will "be over \$90 per month during his retirement." He alleged that if he had been told he could "lock in" to increased retirement benefits he "certainly would have done so."

The applicant alleged that he "was not provided with the information that had [he] joined the delayed entry program on or before 07 September 1980, [he] would have been eligible for the full 50% retirement system." The applicant "was not counselled by [his] recruiter that if [he] joined the delayed entry program on or before 07 Sep 1980, [he] would have been eligible for the 50% retirement system instead of the High 3 system." The recruiters had that information at that time.

VIEWS OF THE COAST GUARD

On November 17, 2000, the Chief Counsel of the Coast Guard recommended to the Board that it deny relief in this case.

The Chief Counsel stated that the applicant alleged that his recruiter had a duty to counsel him regarding the conversion date for participation in the "50% military retirement system" instead of the "High 3 system".

The Chief Counsel said there was no such duty. The Chief Counsel said there was no statute or regulation that required the Coast Guard "to counsel civilian applicants considering enlistment" with respect to the two retirement systems.

The Chief Counsel also said that the "[a]pplicant has failed to prove that 'but for' his alleged lack of knowledge of the conversion date of the military retirement systems, he would have enlisted prior to the conversion date." The Chief Counsel said that his enlistment on October 27, 1980 "affirmatively rebuts Applicant's allegation that he would have enlisted earlier if he [had] known certain information."

RESPONSE OF THE APPLICANT TO COAST GUARD'S VIEWS

On November 20, 2000, the Board sent the applicant a copy of the views of the Coast Guard and notified the applicant that he could submit a response to these views within 15 days of the date of notification.

On December 1, 2000, the Board received a response from the applicant. He said, "I maintain that an injustice occurred when my recruiter did not fully explain all of my military benefits As I stated in my original request, I was not notified that my decision to not participate in the delayed entry program would lead to the loss of military benefits."

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 concerning this matter pursuant to section 1552 of title 10, United States Code. The application was timely since the applicant was a member of the Coast Guard from 1980 to the present.

2. The applicant enlisted initially in the Coast Guard on October 27, 1980. He asked the Board to correct his record to show that he entered the Coast Guard's delayed entry program prior to or on September 8, 1980.

3. The applicant alleged that if he had entered the Coast Guard on or before September 8, 1980, he could have received 50% of base pay retirement pay benefits instead of high three retirement pay benefits. He estimated that the benefit loss will be over \$90.00 per month during his retirement.

4. The applicant alleged that his recruiter had a duty to counsel him regarding the conversion date for participation in a particular retirement system. The only citation offered (Coast Guard Recruiting Manual 1.A.6.a.) in support of this point does not apply as it pertains to the presentation of Coast Guard life, not Coast Guard retirement.

5. There is no statute or regulation that requires the Coast Guard to counsel civilian applicants for the Coast Guard regarding retirement.

6. The law enacting the High 3 system did not go into effect until September 8, 1980. Therefore, the recruiter could not have told him about.

7. The applicant alleges that he would have elected the 50% retirement system in 1999, but he offers no proof that he would have done so in 1980.

8. Therefore, the Board is persuaded that the applicant did not establish, by a preponderance of the evidence, that the Coast Guard committed error or injustice.

9. Accordingly, the application should be denied.

ORDER

The application of
denied.

