

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2000-175

FINAL DECISION

Attorney-Advisor:

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on August 16, 2000.

This final decision, dated June 14, 2001, is 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 retired senior chief [REDACTED] E-8), asked the Board to correct his date of retirement from December 1, 1997, to December 1, 1999, to reflect 30 years of active duty service. He also asked to be awarded any back pay and allowances he would have received had he completed 30 years of service.

In a previous application to the Board, BCMR Docket No. 139-97, the applicant alleged that he had been erroneously retired on May 1, 1997, rather than December 1, 1997. He alleged that the error was due to the Coast Guard's miscalculation of his active duty base date (ADB), which forced him to retire seven months earlier than necessary under the high year tenure system (HYT). Under HYT, he alleged, he had to retire only upon completing 28 years of active duty. The Coast Guard had told him he would complete the 28 years on April 11, 1997, but in fact his 28th anniversary fell on November 11, 1997. As a result of the Coast Guard's error, the applicant had lost seven months of pay and allowances, and his retirement was two percent less than it would have been if he had been retired on December 1, 1997. Upon receiving a copy of the application, the Coast Guard determined that relief was due and corrected his record administratively before the BCMR had issued a decision. Therefore, BCMR Docket No. 139-97 was administratively closed.

In this new application, the applicant alleged that he had recently discovered that the Coast Guard suspended HYT in the summer of 1997 due to personnel shortages.

Therefore, he alleged, if the Coast Guard had not miscalculated his ADBD in the first place, he would have been able to continue serving until he had completed 30 years of active duty.

In support of his allegation, the applicant submitted a copy of ALDIST 191/97, which was issued by the Commandant on August 14, 1997. The ALDIST states that because of personnel shortages, the HYT system was temporarily suspended for certain rates, including avionics technicians. Eligible members who, under HYT, would have been required to retire between October 1 and December 31, 1997, could apply for two-year waivers. The ALDIST also states that each unit's commanding officer was required to counsel eligible members of the opportunity to remain on active duty.

VIEWS OF THE COAST GUARD

On January 10, 2001, the Chief Counsel of the Coast Guard submitted an advisory opinion recommending that the Board grant the applicant's request by changing his retirement date to December 1, 1999.

The Chief Counsel argued that "[a]s a matter of law, the Board should deny relief in this case" because the HYT Waiver policy was actually first announced on March 13, 1997, in ALDIST 054/97. Therefore, he argued, under the presumption of regularity afforded Coast Guard officers, the applicant had constructive notice of the new policy and could have applied for a waiver prior to his retirement on May 1, 1997.

The Chief Counsel further argued, however, that it is clear from the record that the applicant "never had actual notice of the HYT Waiver policy implemented in March 1997. The record reveals that he would have most assuredly applied for such a waiver if he had been informed of the HYT policy as evidenced by his prompt action to correct his retirement date by filing his original BCMR application less than a month after his retirement in May 1997. Moreover, ... CGPC would most probably have approved such a waiver request."

The Chief Counsel adopted by reference a memorandum prepared by the Coast Guard Personnel Command (CGPC) concerning the applicant's case. CGPC stated that under Article 12.G.3. of the Personnel Manual, which concerns HYT, members in pay grade E-8 "may not stay beyond 28 years of active service." However, under the waiver policy announced in ALDIST 191/97, the applicant was eligible and encouraged to apply for a two-year waiver. CGPC stated that of the 45 members in the applicant's rating who applied for waivers, 43 were granted them. Therefore, it is highly likely that if the applicant had sought a waiver, he would have received one.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 12, 2001, the Chairman sent the applicant a copy of the views of the Coast Guard and invited him to respond within 15 days. On January 23, 2001, the applicant responded, stating that he had no objection to the Chief Counsel'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 submissions, 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.

2. The Board is persuaded that the applicant was never informed about the opportunity to apply for a waiver to extend his active service for an additional two years. Had the Coast Guard not erred regarding his original retirement date, he would have remained on active duty through November 1997 and probably would have learned about the opportunity. His command failed to inform him of the policy, which first went into effect about 47 days before he was erroneously retired on May 1, 1997.

3. The record indicates that if the applicant had learned of the opportunity to apply for a waiver of HYT and earn a full 30-year retirement, he would have done so. Moreover, CGPC has stated that if he had applied for a waiver, he probably would have received one.

4. As a result of his command's failure to inform the applicant of the new HYT Waiver policy in 1997, the applicant lost two years of pay and allowances (though he did receive retirement pay), and his retirement pay is less than it would have been had he completed 30 years of service.

5. Accordingly, the applicant's request for relief should be granted.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

The separation date shown on his DD 214 shall be November 30, 1999, instead of November 30, 1997, so that he shall be deemed retired as of December 1, 1999.

The Coast Guard shall pay the applicant any sums, such as back pay, allowances, and retirement pay, he may be owed as a result of this correction.

