

**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2003-021

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

 **Deputy Chair:**

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 docketed on December 9, 2002, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated June 19, 2003, 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 asked the Board to correct his retirement date from September 1 to December 1, 2002, "so that [he] can find a job and take the leave and out processing days due [him] which total 44 as of this write-up." He alleged that after he was injured on July 13, 2002, about six weeks before his scheduled retirement on September 1, 2002, he was told by Commander R, his primary care physician, that he would be retained in the service for six more months because he would need physical therapy. He gave his physician's written report to his Personnel Reporting Unit (PERSRU), who in turn informed the Human Resources Service and Information Center (HRSIC). Although he was in a cast for eight weeks, he continued to work, expecting to receive his active duty pay. However, when he received his pay statement at the end of October, it showed that he had been retired on September 1st and was receiving retirement pay in addition to active duty pay. At that point, he was told not to come to work anymore.

The applicant alleged that as a result of the error, he was unable to take advantage of Article 12.C.1.f. of the Personnel Manual,¹ under which retiring members may

¹ Article 12.C.1.f. of the Personnel Manual states that "retiring members are eligible for an administrative absence not to exceed 20 days ... to facilitate relocation. This administrative absence in conjunction with retirement is not an entitlement; however, it may be granted at the discretion of the member's command

take a paid administrative absence to look for a new job and relocate, if necessary. In support of his allegations, he submitted a copy of his medical record showing that on July 24, 2002, his doctor, Commander R, noted that his pending retirement should be delayed for at least six months to allow him to complete his treatment. Another record shows that he was assigned to limited duty (desk work) while he was in a cast. In addition, the applicant submitted a series of email messages showing that in early November 2002, his PERSRU and HRSIC personnel were communicating about the confusion about his status and the fact that he was receiving both retired and active duty pay. The emails indicate that the Personnel Command had never authorized his retention on active duty and that his retirement date could not be retroactively changed.

VIEWS OF THE COAST GUARD

On March 21, 2003, the Chief Counsel of the Coast Guard recommended that the Board grant relief in this case. The Chief Counsel based his recommendation upon a memorandum on the case prepared by the Coast Guard Personnel Command (CGPC).

CGPC stated that the applicant received retirement orders on March 25, 2002, that were to take effect on September 2, 2002. However, on July 24, 2002, his doctors recommended that he receive a six-month extension to undergo orthopedic therapy. On July 31, 2002, the PERSRU advised HRSIC, and HRSIC took action to ensure that the applicant's active duty pay would continue beyond his scheduled retirement date. At some point, the applicant's command advised both HRSIC and the applicant that he would retire on December 1, 2002. Therefore, the applicant continued to work.

CGPC stated that under Article 12.C.11.c. of the Personnel Manual, only CGPC may delay or cancel an approved retirement date, and that authority has not been delegated. CGPC stated that neither the applicant's command nor HRSIC communicated with CGPC on this matter until after the applicant had been retired. Therefore, in September 2002, the applicant began receiving both retirement pay and active duty pay. CGPC stated that there is no evidence that he noticed the problem before the end of October, at which point he stopped working.

CGPC stated that the problem was not resolved until mid November, and so the applicant received both retirement and active duty pay for October as well as September. At that time, CGPC told HRSIC that the retirement date would remain September 2, 2002. CGPC alleged that, even if it had been timely advised of the applicant's medical problem, the request for a delay of his retirement would have been disapproved.

CGPC noted that, under Article 12.C.1.f. of the Personnel Manual, "retiring members are eligible for an administrative absence (absence not charged against leave)

provided it does not adversely affect mission performance. This duty is intended for activities related to transition or relocation, e.g., job interviews, not to extend leave periods. ... It may be authorized for consecutive days, including weekends and holidays."

not to exceed 20 days to facilitate relocation.” CGPC admitted that the Coast Guard “committed several administrative errors in this matter that resulted in an injustice to the Applicant” by causing him to work after he was retired, putting him in an “overpaid” status so that his active duty pay was recouped, and depriving him of the opportunity to take an administrative absence. CGPC stated that there “is no evidence to indicate that the Applicant was at fault or contributed to the delay in resolving this matter. It is an injustice to deprive the Applicant his active duty pay for work performed.”

CGPC recommended that relief be granted by correcting the applicant’s retirement date to December 1, 2002; by awarding him all appropriate back pay and allowances and recouping the retirement pay he received; by correcting his record to show that he was in an administrative absence status from October 31 through November 19, 2002, and in a terminal leave status from November 20 through November 30, 2002; and by awarding him payment for any leave balance remaining upon his retirement.

APPLICANT’S RESPONSE TO THE COAST GUARD’S VIEWS

On March 31, 2003, the BCMR sent the applicant a copy of the Chief Counsel’s advisory opinion and invited him to respond. No response was received.

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 10 U.S.C. § 1552. The application was timely.
2. The Board agrees with the Chief Counsel and CGPC that the preponderance of the evidence in the record indicates that administrative errors by the Coast Guard caused the applicant to continue serving on active duty for two months after his scheduled retirement date. His failure to receive active duty pay for work performed constitutes an injustice that should be corrected by the Board.
3. The applicant alleged and CGPC agreed that the Coast Guard’s administrative errors unfairly prevented him from taking an administrative absence for 20 days prior to his retirement date in accordance Article 12.C.1.f. of the Personnel Manual. Although retiring members are not absolutely entitled to an administrative absence under Article 12.C.1.f., commands often grant them. Moreover, the Board notes that the applicant was still undergoing physical therapy at the time of his retirement and it is unlikely that his command would have prevented him from taking 20 days of administrative absence under these circumstances.

4. Therefore, the Board finds that if the applicant's retirement date had actually been December 1, 2002—as his command erroneously led him to believe—he would likely have been allowed to take 20 days of administrative absence. Since the applicant actually stopped working on October 30, those 20 days would cover the period from October 31 through November 19, 2002. For the remainder of the month prior to his retirement, from November 20 through November 30, 2002, he would have been in a terminal leave status. Upon his retirement, he could have sold any days of unused annual leave, as permitted under 37 U.S.C. § 501.

5. Accordingly, relief should be granted.

ORDER

The application of retired xxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted as follows:

His retirement date shall be corrected to December 1, 2002. His record shall be corrected to show that he performed active duty through October 30, 2002; that he was in an administrative absence status as allowed under Article 12.C.1.f. of the Personnel Manual for 20 consecutive days from October 31 through November 19, 2002; and that he was in a terminal leave status from November 20 through November 30, 2002.

His record shall show that he sold back to the Coast Guard any leave balance remaining upon his retirement.

The Coast Guard shall pay the applicant any sum he may be due, including back pay and allowances, as a result of this correction.



