

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-175

**XXXXXXXXXXXXXXXXXX
XXX-XXXXXXXXXXXXXX**

FINAL DECISION

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. The Chair docketed the application on August 15, 2007, upon receipt of the applicant's completed application and subsequently prepared the final decision as required by 33 CFR § 52.61(c).

This final decision, dated April 30, 2008, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant asked the Board to correct his military record to show that he retired in pay grade E-5, which is the highest grade that he held in the [REDACTED] Army National Guard, rather than PS3 (pay grade E-4), which is the highest grade he held within the Coast Guard.

The applicant enlisted in the Navy on August 30, 1965, and was discharged on January 10, 1969, in pay grade E-3 (SN). He served in the National Guard from June 19, 1981, until June 18, 1989, and reached the rank of sergeant (SGT; pay grade E-5) on May 1, 1983. Upon his discharge from the National Guard, he enlisted in the Coast Guard Reserve on May 20, 1990, in pay grade E-4 (PS3).

The Commanding Officer, Coast Guard Human Resources Service & Information Center (HRSIC) informed the applicant that he had been transferred to the Coast Guard Retired Reserve (without pay) effective January 1, 1998, in pay grade E-4, the highest grade he held in the Coast Guard. The applicant stated that after receiving notification of his transfer to the retired list, he brought the matter of the appropriateness of his grade to the attention to HRSIC personnel in February 1998, and was advised to wait until he was within 6 months of eligibility for receipt of retired pay to pursue having the matter corrected. He submitted a copy of a letter that he sent to the HRSIC YN dated February 28, 1998, about his retired pay grade. The applicant stated that he was due to begin receiving retired pay in January 2008, the month and year that he reached his 60th birthday.

APPLICABLE REGULATION

United States Code

Section 1406(b)(2) of title 14 of the United States Codes (Retired pay base for members who first became members before September 8, 1980: final basic pay) states the following:

Non-regular service retirement. In the case of a person who is entitled to retired pay under section 12731 of this title . . . the retired pay base is the monthly basic pay, determined at the rates applicable on the date when retired pay is granted, of the highest grade held satisfactorily by the person at any time in the armed forces.

Coast Guard Reserve Policy Manual

Article 8.C.8. of the Reserve Policy Manual states that retired pay for members with dates of initial entry into military service (DIEMS) prior to 8 September 1980 is computed based on the highest grade satisfactorily held at any time in the Armed Forces and the Commandant's determination that the member's performance in that grade was satisfactory.

VIEWS OF THE COAST GUARD

On January 1, 2008, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant the partial relief, as recommended by the Commander, Coast Guard Personnel Command (CGPC) in a memorandum attached to the views of the Coast Guard. CGPC stated that the "applicant's retired pay [should] be computed based upon the highest grade satisfactorily held at any time in the armed forces pursuant to 10 USC § 1406(b)(2)." In this regard, CGPC further stated the following:

Based upon a review of the applicant's record and applicable policy and statute . . . the computation of the applicant's retirement pay should be made according to the "highest grade satisfactorily held at any time in the armed forces." The applicant's record supports that while in the [REDACTED] Army National Guard he held the rank of Sergeant, E-5, from May 1, 1983 until his discharge from the ARNG on June 8, 1989. As the applicant's record does not denote any derogatory information or demotion during this period, it is presumed that his service was satisfactory and therefore his retirement compensation in . . . should be computed based upon pay grade E-5 vice his official pay grade [E-4] upon assuming RET-2 status . . .

Though the applicant's BCMR application does not specifically request that his records be corrected to reflect the higher grade on his Armed Forces Identification Card and official correspondence, information submitted by the applicant in support of his BCMR application indicates that he desires such. A review of the applicant's official record with the Coast Guard indicates that the highest grade he held with the Coast Guard was E-4 . . . This is the applicant's official rate and pay

grade at the time he assumed RET-2 status and is therefore the rate/grade that is applicable for all official correspondence and to be used on his retired ID card. The rate/grade applied to the computation of the applicant's retired pay does not have to conform to the applicant's rate/grade at the time of retirement. Additionally, it would be improper to indicate a grade as the applicant's official grade within the Coast Guard that the applicant never held, i.e., petty officer second class, E-5.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 29, 2008, the Board received the applicant's reply to the views of the Coast Guard. He stated that he accepted the Coast Guard's recommendation for partial relief.

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 concerning this matter pursuant to section 1552 of title 10 of the United States Code. The application was timely.
2. The Coast Guard admitted that it committed an error when it determined that E-4 was the highest grade satisfactorily held by the applicant for pay purposes during his military career. The Board agrees that the Coast Guard committed an error in this regard based upon CGPC's recent review and determination that the applicant's National Guard service in pay grade E-5 was satisfactory, as nothing in his record indicates otherwise.
3. CGPC's recent determination that the applicant's E-5 National Guard service was satisfactory complies with Article 8.C.8. of the Reserve Policy Manual. This provision states that "retired members with date of initial entry to military service . . . prior to 8 September 1980 is computed based on the highest grade satisfactorily held at any time in the Armed Forces *and the Commandant's determination that the member's performance in that grade was satisfactory.*" [Emphasis added.]
4. The Board notes that the applicant accepted the recommendation of the Coast Guard that his retired pay will be calculated based on pay grade E-5, but that PS3, the highest grade he held while in the Coast Guard, will still be reflected on his other official Coast Guard documents, such as his military retiree identification card.
5. Accordingly, the applicant is entitled to the partial relief recommended by the Coast Guard.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of XXXXXXXXXXXXX, USCGR, for correction of his military record is granted in part as follows: The Coast Guard shall correct his record to show that he is entitled to retired pay computed based upon pay grade E-5, the highest grade he held satisfactorily in the National Guard. The applicant shall receive back pay and allowances retroactive to the date on which his retired pay began.

All other requests are denied.

