

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2011-043

**XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX**

FINAL DECISION

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 Chair docketed the case after receiving the applicant's completed application on December 8, 2010, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated July 14, 2011, is approved and 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 record to show that he retired from the Coast Guard Reserve as an E-8 on [REDACTED]. He alleged that although he served in the Coast Guard Reserve as an E-5, he attained the rank of E-8 while serving in the U.S. Marine Corps Reserve from 1969 to 1983. Therefore, he argued, he should be retired at that pay grade. The applicant stated that he learned of this error on or about July 17, 2010, which was his 60th birthday and the day he became eligible for Reserve retirement pay.

In support of these allegations, the applicant submitted (a) a "Reserve Retirement Master Control Card (1820)," prepared by the Separation and Retirement Branch of the Navy Bureau of Personnel on May 3, 2010, which shows that he served in the USMC Reserve from March 4, 1969, to August 7, 1983, when he was honorably discharged in pay grade E-8, and (b) a Statement of Creditable Service from the Coast Guard, which shows that he was in pay grade E-5.

VIEWS OF THE COAST GUARD

On March 30, 2011, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant relief. In making this recommendation, he adopted the findings and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC), which stated that the Board should grant relief because the applicant was honorably discharged from the Marine Corps Reserve as an E-8, and retired members who began military service before September 8, 1980, should receive retired

pay “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.”

The PSC noted that granting relief in this case would be consistent with the Board’s decision in BCMR Docket No. 2007-175, in which the Board ordered the Coast Guard to correct the applicant’s 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.” The Board found in that case that although the applicant was properly retired from the Coast Guard as an E-4, and so his identification card and other documents should show his rate as E-4, under 10 U.S.C. § 1406(b)(2)¹ and Article 8.C.8. of the Reserve Policy Manual,² his retired pay had to be based upon his highest grade satisfactorily held in the Armed Forces at any time, which was E-5.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 6, 2011, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to submit a response within thirty days. 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 is timely.
2. Because the applicant entered military service before September 8, 1980, he is entitled to receive Reserve retired pay based on the highest pay grade he satisfactorily held at any time in his military career.³ He alleged that the highest pay grade he satisfactorily held was E-8, even though he was an E-5 when he retired from the Coast Guard, and he submitted evidence showing that he was an E-8 when he was honorably discharged from the Marine Corps Reserve in 1983. The Coast Guard has conceded that the highest grade he satisfactorily held in the military was E-8. Therefore, the Board finds that the applicant has proved by a preponderance of the evidence that the highest grade he satisfactorily held in the military was E-8, and his retired pay should be based on the monthly basic pay of an E-8 even though he retired as an E-5.
3. Accordingly, relief should be granted by correcting the applicant’s record to show that the highest grade he satisfactorily held, for the purpose of calculating his retired pay, is E-8.

¹ 10 U.S.C. § 1406(b)(2) (“Retired pay base for members who first became members before September 8, 1980: final basic pay, ...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 (or, ...), of the highest grade held satisfactorily by the person at any time in the armed forces.”)

² Article 8.C.8. of the Reserve Policy Manual states that, for members with dates of initial entry into military service prior to 8 September 1980, retired pay 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.

³ See footnote 1, above.

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCGR (Retired), for correction of his military record is granted as follows:

The Coast Guard shall correct his record to show that he is entitled to retired pay based upon pay grade E-8, the highest grade he held satisfactorily in the U.S. Marine Corps Reserve. He shall receive back pay and allowances retroactive to the date on which his retired pay began.

