

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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2021-090**

  
PS2 (Retired)

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**FINAL DECISION**

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on June 18, 2021, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated November 3, 2023, 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, a former Port Security Specialist, Second Class (PS2/E-5), who retired from the Coast Guard Reserve on April 8, 2021, asked the Board to correct his record to show that he retired at the rank of E-6, which the applicant alleged he was promised by a Coast Guard Recruiter prior to his entry into the Coast Guard. The applicant explained that he had achieved a rank of E-6 while serving for the United States Navy and when he decided to enlist in the Coast Guard, he was told that, despite the loss in his paygrade going into the Coast Guard, when he retired he would be paid for the highest rank he achieved while serving.

**SUMMARY OF THE RECORD**

The applicant served in the United States Navy and the Navy Reserve from December 25, 1983, until his discharge on April 24, 1997. The applicant was discharged with a rank of E-6.

On April 25, 1997, the applicant enlisted in the Coast Guard Reserve, and served until his retirement on April 8, 2021. The applicant enlisted in the Coast Guard with a rank of E-5 and maintained that rank until his retirement.

The applicant's high 36 months of active service began on April 8, 2018, and concluded upon his retirement date of April 8, 2021. These dates yielded the following retirement calculations:

START DATE	END DATE	TOTAL DAYS	MONTHLY RATE	COMPUTATION
January 1, 2021	April 7, 2021	97	3609.9	\$11,662.31
January 1, 2020	December 31, 2020	360	3501.9	\$42,022.80
December 25, 2019	December 31, 2019	6	3396.6	\$679.32
January 1, 2019	December 24, 2019	354	3396.6	\$40,079.88
April 8, 2018	December 31, 2018	263	3310.5	\$29,022.05
Total Days		1080		
Derived High 36		\$3,429.62		
\$3,429.62 * 0.2475 (multiplier)		\$848.00		

### VIEWS OF THE COAST GUARD

On January 12, 2022, a Judge Advocate (JAG) for the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

The JAG argued that all of the applicant's Coast Guard service and retirement pay documentation indicate that he concluded his Coast Guard career at a paygrade of E-5 and became retirement eligible at a paygrade of E-5. According to the JAG, there is no documentation within the applicant's service record indicating that he should have been retired at the paygrade of E-6 or to support the applicant's claim that he was told that he would be retired at the paygrade of E-6. The JAG argued that the applicant failed to provide any evidence or proof that he was made such promise and that even if he had been given that promise, Congress had made laws regarding military retirement and the military branches do not have authority to reach beyond those laws. Accordingly, the JAG argued that even if the erroneous promise had been made, it would not have been binding on the Coast Guard. In addition, the JAG stated that unlike the regular active duty component of the Coast Guard, there is no statutory authority nor any requirement for the Coast Guard to retire a non-regular Coast Guard Reserve member at the highest grade that member held while in the Coast Guard or another service. The JAG further stated that the Coast Guard

recognizes that a different result could have occurred in accordance with 14 U.S.C. § 2311, which uses the “highest grade held” language, had the applicant retired as an active duty member. However, there is no similar statutory language for a non-regular member.

The JAG claimed that the applicant’s retired pay was calculated in accordance with 10 U.S.C. § 12739 and 10 U.S.C § 1407. The JAG explained that because the applicant enlisted in the Navy in 1983, he is a post-September 7, 1980, member for retirement pay purposes. i.e. he is under the high 3 retirement system. The JAG further explained that in accordance with 10 U.S.C. § 1407(d)(1) and (4), the applicant’s retirement pay was calculated using the last 36 months of the active duty pay he would have received had he served on active duty. The JAG stated that while the applicant attained a paygrade of E-6 while serving in the Navy between 1994 and 1997, those were not his highest 36 months. The JAG argued that the applicant took a voluntarily reduction in his paygrade to enter the Coast Guard and never advanced beyond his entry paygrade of E-5. Because the applicant remained at an E-5, the JAG claimed that the applicant’s highest 36 months of pay while serving in the Coast Guard was at an E-5.

In conclusion, the JAG stated that the Coast Guard does not dispute that the applicant attained a paygrade of E-6 while serving in the Navy, however, he enlisted in the Coast Guard as an E-5 and never achieved a higher rank. Accordingly, the JAG argued that the applicant failed to show that the Coast Guard committed an error or injustice when calculating his retirement pay based of his E-5 paygrade.

#### **APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On October 22, 2022, the Chair sent the applicant a copy of the Coast Guard’s views and invited him to respond within thirty days. As of the date of this decision, no response has been received.

#### **APPLICABLE LAW AND POLICY**

14 U.S.C. § 1407(d) provides the following guidance on non-regular service members’ retirement computation:

(d) Computation of high-three average for members and former members entitled to retired pay for nonregular service.

(1) Retired pay under chapter 1223.--The high-three average of a member or former member entitled to retired pay under [section 12731](#) of this title is the amount equal to –

(A) the total amount of monthly basic pay to which the member or former member was entitled during the member or former member's high-36 months (or to which the member or former member would have been entitled if the member or former member had served on active duty during the entire period of the member or former member's high-36 months), divided by

(B) 36.

...

(4) High-36 months.--The high-36 months of a member or former member whose retired pay is covered by paragraph (1) or (2) are the 36 months (whether or not consecutive) out of all the months

before the member or former member became entitled to retired pay or, in the case of a member or former member entitled to retired pay by reason of an election under section 12741(a) of this title, before the member or former member completes the service required under such section 12741(a), for which the monthly basic pay to which the member or former member was entitled (or would have been entitled if serving on active duty during those months) was the highest. In the case of a former member, only months during which the former member was a member of a uniformed service may be used for purposes of the preceding sentence.

### FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on the applicant's military record and submissions, the Coast Guard's submission and applicable law:

1. The Board has jurisdiction over this matter under 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in his Coast Guard military record. The Board finds that the applicant has exhausted his administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued.

2. The application was timely filed within three years of the applicant's discovery of the alleged error or injustice in the record, as required by 10 U.S.C. § 1552(b).

3. The applicant alleged that the Coast Guard erroneously calculated his retirement pay at a paygrade of E-5 instead of the highest paygrade he attained while serving in the Navy which was E-6. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in the military record, and the applicant bears the burden of proving, by a preponderance of the evidence, that the disputed information is erroneous or unjust.<sup>1</sup> Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."<sup>2</sup>

4. The Board's review of the applicant's record shows that he enlisted in the regular Navy on May 2, 1983, where he served until he transferred to the Navy Reserve in 1990, attaining a rank or paygrade of E-6. After serving in both the Regular and Navy Reserve, the applicant enlisted in the Coast Guard Reserve as an E-5 and remained at that rank until his retirement in 2021. Upon his retirement, the Coast Guard was bound by the laws established by Congress regarding the computation of his retirement pay, which required that the applicant's retirement be calculated using his highest 36 months of pay, not his highest paygrade. Here, the record shows that the applicant's highest 36 months of pay began on April 8, 2018, and concluded upon his retirement on April 8, 2021. The applicant's apprehension at realizing that his pay was calculated based on his E-5 paygrade instead of the E-6 paygrade is understandable, but the record shows that calculating his retirement pay based on the applicant's highest 36 months of pay, whether attained as an E-5 or E-6, was to his advantage, not his detriment. The salary the applicant received as an

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<sup>1</sup> 33 C.F.R. § 52.24(b).

<sup>2</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

E-6 while serving in the Navy in the 90s, was lower than the salary he received as an E-5 serving in the Coast Guard between 2018 and 2021. The computation for a Reserve retirement under 10 U.S.C § 1407 requires that the highest 36 months of pay be used as a basis for calculations, not the servicemembers highest rank. Accordingly, the applicant has failed to prove, by a preponderance of the evidence, that the Coast Guard's calculations were erroneous or unjust.

5. For the reasons outlined above, the applicant has not met his burden, as required by 33 C.F.R. § 52.24(b), to overcome the presumption of regularity afforded the Coast Guard that its administrators acted correctly, lawfully, and in good faith.<sup>3</sup> He has not proven, by a preponderance of the evidence, that the Coast Guard erroneously or unjustly calculated his retirement pay based off his highest 36 months of pay. Accordingly, the applicant's request should be denied.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

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<sup>3</sup> *Muse v. United States*, 21 Cl. Ct. 592, 600 (1990) (internal citations omitted).

ORDER

The application of former PS2 [REDACTED] [REDACTED] USCGR, for the correction of his military record is denied.

November 3, 2023

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