

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1999-065

FINAL DECISION

ANDREWS, 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. The BCMR docketed the case on February 23, 1999, upon receipt of the applicant's completed application.

This final decision, dated December 9, 1999, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a xxxxxxxx now retired from the Coast Guard, asked the Board to correct his record by changing the narrative reason for separation on his discharge form (DD 214) from "non-selection, permanent promotion" to "voluntary retirement." He also asked the Board to change his separation program designator (SPD) code from SGB, which means "mandatory retirement required by law when a commissioned or warrant officer was not selected for permanent promotion," to RBD, which means "voluntary retirement authorized but not required by law when a member has attained sufficient service to retire."

APPLICANT'S ALLEGATIONS

The applicant alleged that when xxxx fail of selection to the rank of xxxxxxxxxx twice, they are supposed to receive letters from the selection board informing them that, if they wish to be retired rather than discharged for failure of selection, they must submit a letter requesting voluntary retirement. The applicant stated that he never received the letter. He alleged that the only formal

notification of his second failure of selection that he received was his detachment and travel orders. The orders did not contain the information about having to submit a letter requesting voluntary retirement.

The applicant stated that he never requested retirement because he assumed he would automatically receive "retirement" as his narrative reason for separation since he was being retired after having completed more than 20 years of active duty. The applicant stated that having "non-selection, permanent promotion" on his DD 214 was likely to prejudice prospective employers against hiring him.

VIEWS OF THE COAST GUARD

On November 3, 1999, the Chief Counsel of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant the applicant's request for relief.

The Chief Counsel attached to his advisory opinion a memorandum on the case prepared by the Coast Guard Personnel Command (CGPC). CGPC explained that although a letter formally notifying the applicant of his option to request voluntary retirement was prepared and sent to the applicant via his chain of command, it "became misrouted between CGPC and [the applicant]." Therefore, the applicant was not informed that he had to make a written request in order to have his DD 214 reflect voluntary retirement rather than mandatory retirement for failing to be promoted. CGPC recommended that the Chief Counsel recommend that the Board grant the applicant relief by changing his SPD code to RBD and his narrative reason for separation to "sufficient service for retirement," in accordance with the SPD Handbook.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard Reserve on July 23, 19xx. He was discharged in order to join the Coast Guard on September 30, 19xx. On February 2, 19xx, he received a "temporary commission" as an ensign. He was promoted to lieutenant junior grade on August 27, 19xx. On May 13, 19xx, he received a permanent commission as an officer in the Coast Guard. On August 27, 19xx, he was promoted to the rank of xxxxxx.

In 199x and 199x, the applicant was passed over for promotion by the xxxxx selection board. Therefore, under 14 U.S.C. § 283, he was scheduled for retirement on June 30, 199x.

On September 29, 199x, CGPC sent the applicant a letter via his chain of command to notify him that he had failed of selection a second time and would be retired. The letter states that “you may request voluntary retirement on or before 1 July 199x under the provisions of [14 U.S.C. § 291].” It is unclear in the record why this letter apparently was never received by the applicant.

On June 30, 199x, the applicant was retired from the Coast Guard with an SPD code of SGB and a narrative reason for separation of “non-selection, permanent promotion.” He had completed 23 years and 9 months on active duty, including over 11 years of active commissioned service.

APPLICABLE LAW

Title 14 U.S.C. § 283 requires a lieutenant “who has failed of selection for promotion to the grade of lieutenant commander for the second time shall: (1) be honorably discharged on June 30 of the promotion year in which his failure of selection occurs; or (2) if he so requests, be honorably discharged at an earlier date without loss of benefits ...; or (3) if, on the date specified for his discharge in this section, he has completed at least 20 years of active service or is eligible for retirement under any law, be retired on that date”

Title 14 U.S.C. § 291 states that “[a]ny regular commissioned officer who has completed twenty years’ active service in the Coast Guard ..., at least ten years of which shall have been active commissioned service, may, upon his own application, in the discretion of the President, be retired from active service.”

The SPD Handbook states that officers whose “voluntary retirement [is] authorized but not required by law when a member has attained sufficient service to retire” shall receive an RBD separation code and the narrative reason for separation “sufficient service for retirement.” There is no narrative reason for separation called “voluntary retirement” authorized under the SPD Handbook.

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 of the United States Code. The application was timely.
2. The applicant alleged that he never received a letter from CGPC dated September 29, 199x, which informed him that he had to make a written

request to be retired in order to have “voluntarily retired” appear as the narrative reason for separation on his DD 214 instead of “non-selection, permanent promotion.” He alleged that if he had been properly informed, he would have requested voluntary retirement. The applicant further alleged that it was an injustice for the latter reason for separation and the SPD code SGB to appear on his DD 214 because it might prejudice prospective employers against hiring him and because he had qualified for voluntary retirement.

3. The Coast Guard indicated that the letter informing the applicant of his right to request voluntary retirement had gone astray. The Coast Guard recommended that the Board grant the applicant relief by changing his SPD code to RBD and his narrative reason for separation to “sufficient service for retirement.”

4. Due to an administrative error, the applicant was not informed that he was required to request voluntary retirement in order to avoid having “non-selection, permanent promotion” appear on his DD 214. Under 14 U.S.C. §§ 283 and 291, the applicant was eligible for a voluntary retirement after his second failure of selection to xxxxxx. If the applicant had been informed that he was required to make a formal request for a voluntary retirement, he would have done so.

5. There is no narrative reason for separation of “voluntary retirement” authorized by the SPD Handbook. Officers in the applicant’s situation who request voluntary retirement after failing of selection twice usually receive the narrative reason “sufficient service for retirement” along with the RBD separation code.

6. Accordingly, the relief recommended by the Coast Guard should be granted.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application for correction of the military record of XXXXXXXXXXXX, USCG, is hereby granted as follows:

Block 26 on the applicant's DD 214 dated June 30, 199x, shall be changed from SGB to RBD.

Block 28 on the DD 214 shall be changed from "non-selection, permanent promotion" to "sufficient service for retirement."

Mark A. Holmstrup

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