

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-014

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FINAL DECISION

AUTHOR: Andrews, J.

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 case on October 23, 2006, upon receipt of the applicant's completed application and military records.

This final decision, dated June 13, 2007, 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 retired reservist, asked the Board to correct his records so that he can be paid for drills he performed in March, April, May, June, July, and September 2006. He alleged that due to an administrative error by the Coast Guard, he was not informed until October 2006 that he had been retired from the Reserve on his 60th birthday, February 28, 2006, and should stop drilling. He stated that he did not receive retirement orders and a letter notifying him that he had completed 20 years of service toward retirement until October 2006. The applicant further stated that the Coast Guard Personnel Services Center (PSC) paid him for the drills he performed after his 60th birthday but then recouped them as overpayments.

SUMMARY OF THE RECORD

From January 6, 1966, through March 20, 1968, the applicant served on active duty in the Marine Corps (2 years, 2 months, and 15 days). On December 11, 1987, the applicant enlisted in the Coast Guard Reserve. He became a marine science technician and drilled regularly to earn satisfactory years of service until 2006, except for one unsatisfactory anniversary year ending on December 10, 1989.

On September 13, 2005, the applicant submitted a "Request for Waiver" to the Commandant through his chain of command in which he asked to remain in the Reserve past his 60th

birthday, February 28, 2006, because his 20-year anniversary date as a reservist would be December 11, 2006. On September 16, 2005, the applicant's command forwarded his request for an "age waiver" to the Coast Guard Personnel Command (CGPC) Reserve Personnel Management Division.

On October 31, 2005, the Commandant sent the applicant a letter stating that his request to "defer mandatory separation beyond age 60, forwarded to this office for disposition, is disapproved." The letter noted that the law allowed members who did not yet have 20 years of satisfactory service to defer their retirement to age 62, but that the applicant would have 19 years of satisfactory service as of December 11, 2005, and could earn a 20th qualifying year prior to his 60th birthday on February 28, 2006. The letter advised the applicant to contact the PSC and review Chapter 8.C.11. of the Reserve Policy Manual to learn how partial years may count as a satisfactory year of service toward retirement.

A Summary of Points in the record shows that because of the applicant's prior service in the Marine Corps, he would have 19 years, 2 months, and 15 days of satisfactory service on his anniversary date December 11, 2005.

On February 27, 2006, the applicant signed a Reserve Retirement Transfer Request showing that he requested transfer to "RET-1 [status] (Retired with Pay) Transfer is effective on your 60th birthday. Note: No Drills or ADT will be authorized or approved after the above Effective Date of Transfer." The form shows that the applicant had filled in December 2006 as the "Effective Month/Year of Transfer" and noted in another block on the form that he planned to drill until December 31, 2006. The form shows that his request to transfer to RET-1 status was approved on March 2, 2006, by a senior chief yeoman at his command and on March 13, 2006, by a master chief yeoman at the regional Integrated Support Command, who wrote above his signature, "RETIREMENT EFFECTIVE 28 FEB 2006."

In an email dated July 13, 2006, a senior chief yeoman in the Reserve Personnel Management Division asked the applicant's command about his status since he had already turned 60 years old but was still assigned to an operational unit, did not have an age waiver, and had not yet submitted a Reserve Retirement Transfer Request through that office. In response, a Reserve Enlisted Assignment Officer sent a copy of the applicant's Reserve Retirement Transfer Request dated February 27, 2006, and stated that it had been approved by a master chief petty officer several months earlier. The senior chief yeoman replied that Reserve Retirement Transfer Requests were supposed to go directly to the PSC and that the PSC did not have one for the applicant.

In further follow-up emails dated in July and August 2006, personnel specialists discussed what paperwork was missing and needed for the applicant to begin receiving retired pay, which he had never requested, and the fact that his partial anniversary year from December 11, 2005, through February 28, 2006, qualified as a satisfactory year toward retirement under Chapter 8.C.11. of the Reserve Personnel Manual.

On October 3, 2006, the PSC issued the applicant's retirement orders, which state that he was "hereby transferred to the United States Coast Guard Retired Reserve with pay as a MST1 effective FEBRUARY 28, 2006." In addition, the PSC notified the applicant in a letter retroac-

tively dated February 27, 2006, that he had completed 20 years of satisfactory service and was “eligible to receive retired pay when [he] reach[ed] age 60 on February 28, 2006.”

A database print-out dated December 14, 2006, shows after the applicant’s anniversary date December 11, 2005, he completed drills in December 2005 and in January, February, March, April, May, June, July, and September of 2006.

VIEWS OF THE COAST GUARD

On March 26, 2007, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant’s request.

The JAG stated that under Chapters 8.B.3. and 8.B.12. of the RPM, the applicant was not entitled to remain in an active status past his 60th birthday unless his request for a waiver was approved because of a compelling need of the Coast Guard. The JAG stated that the applicant was notified on October 31, 2005, that his request for such a waiver had been disapproved and yet despite receiving notice of his mandatory retirement in February 2006, he “continued to drill and collect payment for drills performed beyond his mandatory retirement date.” Therefore, the JAG argued, the applicant was on “notice that he would be retired on the day he reached the mandatory retirement age. As soon as the Coast Guard discovered the erroneous payments it sought to recoup them and at the same time award the Applicant back pay for retirement which he became eligible to receive on his mandatory retirement date.” The JAG argued that the Coast Guard’s recoupment and payment actions were not erroneous or unjust because the applicant was on notice that he would not be allowed to serve beyond his 60th birthday.

The JAG submitted and adopted a memorandum on the case prepared by CGPC. CGPC stated that the applicant’s September 13, 2005, request for an age waiver had been properly processed and denied since under the regulations he could qualify for retirement prior to his 60th birthday. CGPC stated that the applicant was timely notified of the disapproval of his request and has not shown that he was unaware of it. CGPC stated that when the applicant completed the Reserve Retirement Transfer Request on February 27, 2006, he should have had “no expectation that a retirement date of December 2006 would be approved given the disapproval of his request to remain in the active Reserves beyond age 60.” However, the applicant “continued to drill without any specific authority even in light of his disapproved waiver.”

CGPC stated that although the applicant continued to drill, there was no legal authority for him to do so past February 28, 2006. CGPC admitted that the applicant’s 20-year notification letter and retirement orders were issued retroactively in October 2006, but argued that he had been paid retirement pay effective as of February 28, 2006, and cannot receive both retirement pay and drill pay for the same period. CGPC recommended that the Board deny his request.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 4, 2007, the applicant responded to the views of the Coast Guard. He objected to the Coast Guard’s recommendation and stated that although he notified the Coast Guard of his intention to retire six months before his intended retirement date of December 31, 2006, he was

never officially notified to stop performing his duties. The applicant argued that “it was the Coast Guard[’s] responsibility to inform me officially in writing to stand down and retire and not call me by phone almost 4 months later.”

The applicant also claimed that he did not earn a 20th satisfactory year toward retirement until September 2006. He alleged that when he first enlisted, he was told that he had until age 62 to complete 20 satisfactory years toward retirement.

APPLICABLE LAW

Chapter 8.C. of the RPM contains the regulations for the “non-regular” retirement of reservists under 10 U.S.C. § 12731. Chapter 8.C.3.b. states that “[f]or the purpose of determining entitlement to retired pay in accordance with 10 U.S.C. 12732, years of satisfactory federal service are computed by totaling all anniversary years in which at least 50 points have been credited on the following basis: (1) One point for each day of active duty in an Active or Reserve component of an Armed Force ... (2) One point for each authorized IDT drill ... performed. (3) 15 points a year for membership in a Reserve component of an Armed Force. (4) Points earned by satisfactory completion of authorized correspondence courses. “

Chapter 8.C.3. provides that a qualifying year of satisfactory service toward a “non-regular,” Reserve retirement is any full year in which the member “is credited with a minimum of 50 retirement points. An accumulation of 20 such years is one requirement necessary to qualify for non-regular retired pay.” However, paragraph a.(3) states the following:

A member who has a break in service that occurs during an anniversary year shall be credited with a partial year for non-regular retirement. When a partial year occurs, the member must meet the minimum retirement point requirements set out in Section 8.C.11. of the chapter for the member’s service to be credited as a partial year towards a qualifying year. Partial years of qualifying service may be combined and credited toward total qualifying service.

Chapter 8.C.11. provides a chart which shows that a partial year of either 2 months and 15 days—such as the applicant’s partial year at the end of his Marine Corps enlistment—or 2 months and 17 days—such as the applicant’s partial year from December 11, 2005, to his birthday on February 28, 2006—counts as qualifying service if the reservist earns at least 11 points during the period. In addition, the chart shows that during any partial year of at least 61 days but no more than 85 days, a reservist earns 3 gratuitous membership points of the 15 such points he would normally earn during a full year.

Chapter 8.B.3 of the Reserve Policy Manual (RPM) in effect in 2006, titled “Mandatory Discharge for Age,” states that

reservists serving in the Ready Reserve will be removed from an active status upon reaching age 60. Any member qualified for retirement, who does not request to be transferred to the Retired Reserve, will be transferred to the Standby Reserve, Inactive Status List (ISL) on the day the member reaches 60 years of age. A member not qualified for retirement (and not statutorily precluded from discharge) shall be discharged without board proceedings, unless Commandant (G-WTR) approves the member's request to defer retirement until age 62 (or sooner if the member becomes retirement qualified in the interim).

Chapter 8.C.12.c. states the following:

Reservists who remain in an active status in the Ready Reserve after becoming retirement eligible may request to transfer to RET-1 status upon reaching age 60. ... Any member qualified for retirement, who does not request to be transferred to the Retired Reserve, will be transferred to the Standby Reserve Inactive Status List (ISL) on the day the member reaches 60 years of age. Members who are eligible to receive retired pay will only be retained in the Ready Reserve beyond age 60 to fulfill compelling needs of the Coast Guard and upon approval of a written request submitted by the member to Commandant (G-WTR-1), via the chain of command. See Sections 8.A.5. and 8.B.3.

Chapter 8.C.2. describes the two retirement categories: RET-1, which is for reservists who are at least 60 years old and have completed 20 years of satisfactory federal service; and RET-2, which is for “reservists who have satisfied all requirements for RET-1 except having reached age 60.” Chapter 8.C.7. states that the Coast Guard “will notify members in writing within one year of completing satisfactory service for retirement purposes, of eligibility for retired pay at age 60. The written notification is commonly called the 20-year letter.”

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 applicant alleged that he should be paid for the drills he performed from March through September 2006 because he did not know that he would be retroactively retired as of his 60th birthday, February 28, 2006.
3. Under Chapters 8.B.3. and 8.C.12.c. of the RPM, the applicant could not continue in the SELRES past his 60th birthday unless he received an age waiver. The applicant clearly knew of this law because on September 13, 2005, he applied for an age waiver. The record shows that on October 31, 2005, the Commandant denied the applicant's request for an age waiver. The request was reasonably denied because the applicant would have two partial years of qualifying service and could qualify for retirement without drilling past his 60th birthday. The letter from the Commandant instructed the applicant to contact the PSC and review Chapter 8.C.11. of the RPM to learn how he could qualify for retirement by his 60th birthday.
4. The Commandant's letter noted that the applicant could earn a satisfactory year of service during the partial year between his anniversary on December 11, 2005, and his 60th birthday on February 28, 2006. The applicant did not do so. Nevertheless, he was still qualified to retire by his 60th birthday because his first partial year, which consisted of his last 2 months and 15 days in the Marine Corps, constituted a qualifying year of service under Chapter 8.C.11. of the RPM.

5. The applicant failed to follow the instructions in the Commandant's letter dated October 31, 2005. Instead, he ignored the fact that his request for an age waiver had been denied and continued to drill past his 60th birthday. He apparently attempted to finagle an unofficial age waiver by writing December 2006 as his effective date of retirement on his Reserve Retirement Transfer Request dated February 27, 2006. However, the master chief yeoman at the regional Integrated Support Command noticed the error and wrote on the form that he approved the applicant's transfer to RET-1 status effective as of February 28, 2006.

6. The applicant's own command allowed him to continue drilling and paid him for those drills. In addition, the Coast Guard did not issue the applicant his retirement orders or 20-year letter until October 2006. In light of the Commandant's October 31, 2005, letter denying his request for an age waiver, however, these facts do not persuade the Board that the applicant was unaware prior to his 60th birthday that he was supposed to contact the PSC to determine how he could qualify for retirement and that he was not authorized to drill for pay or points past his 60th birthday. The applicant has not shown that he attempted to follow the Commandant's October 31, 2005, instructions or that he was miscounseled about his eligibility for retirement on February 28, 2006.

7. Accordingly, the applicant's request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCGR (Retired), for correction of his military record is denied.

Kathryn Sinniger

Dorothy J. Ulmer

Thomas H. Van Horn