

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2011-224

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

This proceeding was conducted 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 upon receiving the completed application on August 6, 2011, 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 May 17, 2012, 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 storekeeper second class (SK2/E-5) on active duty, asked the Board to correct her record to show that she was assigned to a cutter instead of a shore unit, Group xxxxxx, from January 31, 2002, to January 9, 2003, so that she will receive sea pay and credit for sea duty for that period.

The applicant explained that while in basic training, she was told that she and another female member "were going to take part in an 'experiment' involving the assignment of women to a river tender," which had no female berthing. She was issued orders to the Group at the tender's homeport and lived in an apartment. However, she alleged, she worked aboard the tender just as if she had been transferred to it. The applicant alleged that she worked as a member "of the duty and watch schedule [on the tender], worked as a member of the Deck Force, went underway, and [her Enlisted Employee Review (EER)] rating chain was same as all other personnel assigned to the Cutter." In support of her allegations, the applicant submitted the following documents:

- Her EER counseling receipt dated January 27, 2003, is signed by her supervisor aboard the tender, BM2 F, and the approving official, BMCS H, who was the officer in charge (OIC) of the tender.

- Her seaman performance qualifications record, with all but one requirement initialed, includes a chart entitled “Signature of Supervisor.” The chart shows that personnel from the following units signed off on her seaman qualifications as her “supervisor” for the exercises on the following dates: March 7, 2002, Group Engineering Division; March 7, 2002, SSD [Shore-Side Detachment] XXXXX; April 11, 2002, SSD XXXXX; April 11, 2002, a BM3 on the tender; April 23, 2002, SSD XXXXX; May 22, 2002, the BM3 on the tender.
- Her “MRN” Record of Military Requirements, with only a few of the requirements initialed, includes a chart entitled “Signature of Supervisor,” and personnel aboard the tender signed the chart on February 20, 2002, April 17, 2002, and May 23, 2002.
- Her “Watchstander JQR” states that “completion within 30 days of reporting aboard cutter” is mandatory and shows that she completed the qualifications on the following dates in 2002: February 4, 7, 10, 12, 13, 19, 20, 21, 22, 23, 25, and 28; March 1, 2, 14, 19, 21, and 31; and April 2.

VIEWS OF THE COAST GUARD

On January 11, 2012, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case. In so doing, he adopted the findings and analysis in a memorandum provided by the Personnel Service Center (PSC).

PSC stated that although the applicant submitted documentation showing that she sometimes performed work on the tender, her “evidence is inconclusive in justifying that she should be entitled to receive credit for one year of sea time or any special pay or allowances related to such duty. The applicant appeared to have a limited association with the cutter when compared to the vessel’s permanent party.” PSC stated that the applicant did get underway on the tender for some day trips but qualified as a watchstander only when the tender was in port. PSC stated that based on her limited association with the cutter, “she is not found to have met the intent for entitlement to career sea pay” pursuant to ALCOAST 473/01. PSC stated that the applicant’s permanent unit was the Group but she “appears to have been operating in a ‘temporary assigned duty’ (TAD) status and was never intended to be a permanent member of the cutter’s crew.” In support of these allegations, PSC submitted the following:

- A career summary print-out from the Coast Guard’s Direct Access database shows that the applicant was assigned to the Group from January 31, 2002, through February 7, 2003, when she was transferred to attend SK “A” School.
- An email from a chief warrant officer (CWO) dated September 16, 2011, states that the applicant was assigned to the SSD and “may be entitled to 30 days sea time total” for the days she was underway on the tender while assigned to the SSD. The CWO stated that because the tender had only two racks, females “normally only did day trips.” The CWO stated that personnel aboard the tender probably prepared her EER because “there was always a struggle between the cutter command and the Group. Technically the SSD

belonged to the Group, but in reality they worked for the cutter as the Group did not want the Admin burden. When the cutter was in port, the SSD personnel worked hand in hand with the cutter crew. We had a rack in the SSD office building where the females would sleep when they stood nighttime duty on the ship. When the cutter got [underway], the SSD folks typically stayed behind and worked Trop hours M-F.”

- An undated report based on interviews with the command cadre of the tender during the applicant’s assignment to the Group. The interviewer concluded, based on interviews with three CWOs and the applicant, that the applicant “made up to thirty day patrols with the cutter. She was qualified to stand watch on the cutter while it was in port and she worked with the deck force male non-rates while the cutter was in homeport. She paid for her meals [in the galley] because she was entitled to SEPRATS while assigned to the Shore Detachment. After speaking with the member, she indicated that she only did day trips with the [tender], never overnight.”
- ALCOAST 473/01, issued on October 18, 2001, and titled “Career Sea Pay Reform,” states that “level one” career sea pay (CSP) is payable to eligible personnel assigned to tenders. It also states that “[e]ligible members must be permanently or temporarily assigned for duty to a vessel, ship-based staff (including a mobile unit), or ship-based aviation unit pursuant to orders issued by competent authority and the vessels/units primary mission must be accomplished underway.”

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 13, 2012, the Chair sent the applicant a copy of the views of the Coast Guard and invited her to submit a response within thirty days. No response was received.

APPLICABLE REGULATIONS

Article 4.B.7.c. of the Coast Guard Pay Manual in effect in 2002 stated the following about personnel assigned to administrative support units for cutters:

Administrative Shore Unit. An administrative shore unit exists when a vessel cannot berth all assigned personnel at the same time and neither Government owned or leased UPH is available for all personnel in pay grades E6 and below, who have no dependents. Personnel are not eligible for CSEAPAY. Since personnel are not in receipt of CSEAPAY, time does not count for CSEAPAY purposes or as cumulative time toward CSEAPAY PREM.

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 filed.¹

2. The applicant alleged that she was unjustly denied sea pay and credit for sea duty for the period January 31, 2002, to January 9, 2003, because she is female. The Board begins its analysis in every case by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.² 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."³

3. In 2002, the applicant was permanently assigned to a shore unit, the Group, and her records show that she performed duties at the Group, the shore-side detachment (SSD), and on the tender. The preponderance of the evidence in the record indicates that she completed certain ship-board qualifications, such as in-port watchstanding, and got underway on the tender for approximately 30 day trips—i.e., about three day trips per month, on average, while assigned to the Group from January 2002 through January 2003. Although the applicant alleged that she worked as much on the tender as any regular crewmember and was only deprived of the pay and credit for sea duty because of her gender and lack of berthing for females on the tender, the preponderance of the evidence shows that she was assigned to and at least sometimes worked at the Group and SSD. Article 4.B.7.c. of the Coast Guard Pay Manual clearly states that personnel assigned to an administrative shore unit because "a vessel cannot berth all assigned personnel at the same time" are not entitled to sea pay or credit for sea duty. Therefore, the Board finds that the applicant was not entitled to sea pay or credit for sea duty by regulation.

4. The applicant has not proved by a preponderance of the evidence that she has been deprived of the opportunity to perform sea duty because she is female or that males assigned to the SSD in 2002 received sea pay and credit for sea duty. Therefore, she has not proved that she has been discriminated against because of her gender in this regard.

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

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

¹ *Detweiler v. Pena*, 38 F.3d 591, 598 (D.C. Cir. 1994) (holding that, under § 205 of the Soldiers' and Sailors' Civil Relief Act of 1940, the BCMR's three-year limitations period under 10 U.S.C. § 1552(b) is tolled during a member's active duty service).

² 33 C.F.R. § 52.24(b).

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

ORDER

The application of xx, for correction of her military record is denied.

Lillian Cheng

Thomas H. Van Horn

Barbara Walthers