

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2012-067**

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**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 January 27, 2012, 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 September 7, 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 asked the Board to correct his date of separation from the Individual Ready Reserve (IRR) from August 18, 2008, to August 18, 2012. He explained that when he tried to enlist in the Army Reserve in September 2011, his Army recruiter advised him that the Reserve Obligation Termination Date (ROTD) on his DD 214 from the Coast Guard was incorrect and would not enlist him until the ROTD was corrected. Therefore, he asked the Coast Guard to correct his ROTD from August 18, 2012, to August 18, 2008—the date he separated from active duty. In response, the Coast Guard corrected his ROTD and issued a DD 215 correction form changing his ROTD in block 6 of his DD 214 to “not applicable.”

However, as a result of the correction of his ROTD, he is now deemed to be indebted for \$713.79. The debt stems from the recoupment of drill pay he received for drills performed in November and December 2008 and January 2009, when he thought he was a reservist because his DD 214 showed that he had been released into the Reserve with a military service obligation through August 2012. Therefore, he asked the Board to return his ROTD to August 18, 2012, so that his drill pay will not be recouped. He noted that the correction would also place him back in the IRR and allow him to drill again.

## **SUMMARY OF THE RECORD**

The applicant's Coast Guard enlistment contract dated August 19, 2004, shows that he enlisted on active duty for four years. No subsequent period of Reserve duty is indicated. His DD 214 shows that he was released from active duty exactly four years later on August 18, 2008, and that before enlisting in the Coast Guard, he had served 8 months and 27 days of active duty and 4 years, 9 months, and 17 days of inactive duty. The ROTD in block 6 on his DD 214 is August 18, 2012. However, on September 8, 2011, in response to a request from the applicant, the Coast Guard corrected his DD 214 by issuing a DD 215 showing that the ROTD in block 6 is "not applicable."

On November 16, 2011, the Coast Guard Pay and Personnel Center sent the applicant a letter stating that a review of his record had shown that he was overpaid \$713.79.

## **VIEWS OF THE COAST GUARD**

On June 15, 2012, the Judge Advocate General (JAG) of the Coast Guard recommended that the Board grant partial relief in this case. In so doing, he adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC submitted a Statement of Creditable Service prepared by the Coast Guard after he enlisted in 2004, which shows that the applicant first incurred a military service obligation when he enlisted in the Marine Corps Reserve on February 5, 1999. PSC noted that under 10 U.S.C. § 651,

(a) Each person who becomes a member of an armed force ... shall serve in the armed forces for a total initial period of not less than six years nor more than eight years, as provided in regulations prescribed by the Secretary of Defense for the armed forces under his jurisdiction and by the Secretary of Homeland Security for the Coast Guard when it is not operating as a service in the Navy .... Any part of such service that is not active duty or that is active duty for training shall be performed in a reserve component.

(b) Each person covered by subsection (a) who is not a Reserve and who is qualified, shall, upon his release from active duty, be transferred to a reserve component of his armed force to complete the service required by subsection (a).

In addition, PSC noted that under the manual for completing DD 214s, COMDTINST M1900.4D, the instructions for completing block 6 state the following:

Block 6. Reserve Obligation Termination Date. Enter, when applicable, the terminal date of the member's Reserve obligation under the Universal Military Training and Service Act. (Personnel, including women, entering service on and after 1 September 1984 acquire a statutory obligated service requirement of 8 years per Title 10 USC 651. Prior to September 1984, the statutory obligated service requirement was 6 years ...

PSC concluded that because the applicant first entered the military on February 5, 1999, his eight-year military service obligation (MSO) was completed on February 4, 2007, before he was separated from active duty in the Coast Guard. However, the applicant's original DD 214

showed an ROTD of August 18, 2012, as if the applicant had completed no military service before enlisting in the Coast Guard on August 19, 2004.

The Coast Guard stated that because the applicant's true ROTD had already passed before he left active duty, he had no reserve obligation upon his separation from active duty and block 6 should show the ROTD as "not applicable" as shown on the DD 215. However, because at the time, his DD 214 reflected a continuing reserve obligation through August 18, 2012, the applicant was thought to be a reservist and allowed to perform drills. After his ROTD was corrected, however, his record showed that he was discharged on August 18, 2008, rather than released into the Reserve, and as he was no longer a member of the military after that date, his drill pay would normally be recouped. However, PSC stated, the applicant "should not be responsible for repaying back the monies paid to him for any service he performed subsequent to August 18, 2008." Therefore, PSC recommended that the Board correct the record by ordering that the applicant not be held responsible for any pay he received after August 18, 2008.

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

On July 5, 2012, the applicant advised the Board that he does not object to the Coast Guard's recommendation.

### **APPLICABLE REGULATIONS**

Chapter 11.F. of the Pay Manual, COMDTINST M7220.29B, states that a member or former member may submit a written request "for the cancellation of an indebtedness to the U.S. Government which resulted from erroneous payments of pay and allowances made to or on behalf of the member or former member. ... 10 USC 2774 gives the Secretary of Department of Homeland Security authority to effect waiver of claims for erroneous payments of pay and allowances and travel and transportation allowances, when collection of the claim would be against equity and good conscience, and not in the best interest of the United States. The authority of the Secretary has been delegated to Commandant (CG-122) [the Office of Military Personnel]." Paragraph 3 limits such waivers to overpayments not exceeding \$10,000.00. Paragraph 5 provides the following conditions for determining waiver requests:

- a. Claims for erroneous payments which may be waived in whole or in part, must have resulted from an erroneous overpayment.
- b. The erroneous payment must not be the subject of an exception made by the Comptroller General in the account of any accountable official, or which has been transmitted to the General Accounting Office (GAO) for collection, or to the Attorney General for litigation.
- c. Erroneous payments of pay and allowances, and travel and transportation allowances may be considered for waiver action provided the application is received by the Coast Guard or the General Accounting Office within a three year period following date of discovery of the error which caused the erroneous payment.
- d. Erroneous payments that have been wholly or partially recovered must be considered for waiver in the gross amount.
- e. Overpayments must be of such a nature that they would normally go unnoticed or undetected by the member.
- f. Collection action under the claim would be against equity and good conscience and not in the best interests of the United States. Generally, this criteria will be met by a finding that the erroneous payment occurred through administrative error and that there is no indication of fraud, mis-

representation, fault, or lack of good faith on the part of the member or any other person having an interest in obtaining waiver of the claim. Any significant, unexplained increase in pay and allowances which would require a reasonable person to inquire concerning the correctness of the pay or allowances, ordinarily would preclude a waiver when the member fails to bring the matter to the attention of appropriate officials.

## 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. The applicant, having previously succeeded in having his ROTD corrected from August 18, 2012, to August 18, 2008, has asked the Board to change it back to August 18, 2012, so that the Coast Guard will not recoup his drill pay and he can begin drilling again.<sup>1</sup> 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.<sup>2</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>3</sup>

3. The record shows that because the applicant first enlisted in the military on February 5, 1999, his eight-year military service obligation under 10 U.S.C. § 651 ended on February 4, 2007. Therefore, after the applicant's four-year active duty enlistment ended on August 18, 2008, he had no military service obligation and was no longer a member of the military because he signed no new enlistment or reenlistment contract. Nevertheless, his DD 214 was prepared erroneously to reflect a continuing Reserve obligation through August 18, 2012, and the applicant apparently performed some drills in November and December 2008 and January 2009. After his ROTD was corrected, his record showed that he was no longer a member of the Coast Guard or Coast Guard Reserve as of August 18, 2008, and so was not entitled to the drill pay he received thereafter. The Coast Guard therefore sought recoupment of the \$713.79 in drill pay the applicant received in late 2008 and January 2009.

4. The applicant asked the Board to reverse the prior correction of his record so that he will not have to repay the money and can continue drilling. However, the reversal of the correction would be erroneous because the applicant had no continuing military service obligation after August 18, 2008. Nor would such a reversal entitle him to drill because August 18, 2012, has already passed. The Coast Guard recommended, instead, that the Board order the Coast Guard not to recoup the applicant's drill pay. The applicant agreed with that recommendation.

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<sup>1</sup> The Board notes that because August 18, 2012, has passed, the requested correction would no longer make the applicant entitled to drill.

<sup>2</sup> 33 C.F.R. § 52.24(b).

<sup>3</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).

5. The Coast Guard recommends, in essence, that the Board order that the applicant's record be corrected to show that his debt has been waived pursuant to Chapter 11.F. of the Pay Manual. Because the Coast Guard issued an erroneous DD 214 in 2008 and thus misled the applicant to believe that he was a member of the Reserve and eligible to drill for pay, the Board finds that the circumstances of his debt clearly fall within the requirements for a waiver under Chapter 11.F. and 10 U.S.C. § 2774. The applicant received his drill pay in good faith after performing drills for pay as the Coast Guard led him to believe he was eligible to do. Therefore, the Board finds that the debt should be waived because it would be against equity and good conscience and not in the best interests of the United States to collect the debt.

6. Under Chapter 11.F. of the Pay Manual, the applicant could have requested a waiver directly from the Coast Guard, instead of applying to the BCMR. The Coast Guard should have told him to do so in 2011 when he inquired about the debt. Normally, the Board's regulations require applicants to exhaust such administrative remedies before applying to the Board.<sup>4</sup> Given the Coast Guard's apparent failure to timely offer the applicant the waiver remedy directly and the Coast Guard's agreement that his debt should be waived through the Board, the Board will not delay this matter further and elevate form over substance by denying his application so that he would have to apply for waiver hereafter. Instead, the Board will order the Coast Guard to waive the applicant's debt as it has agreed to do.

7. Accordingly, relief should be granted by ordering the Coast Guard to correct the applicant's record to show that any debt he incurred due to payments of drill pay after his separation on August 18, 2008, has been waived. Moreover, if any part of the debt has been recouped, it should be repaid to him.

**[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]**

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<sup>4</sup> 33 C.F.R. § 52.13(b).

**ORDER**

The application of former xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted in part as follows:

The Coast Guard shall correct his record to show that any debt he incurred due to his performance of drills and receipt of drill pay after his separation from active duty on August 18, 2008, has been waived pursuant to 10 U.S.C. § 2774 and Chapter 11.F. of the Pay Manual. The Coast Guard shall pay him any amount that may be due as a result of this correction.

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Peter G. Hartman

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Dana Ledger

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Adam V. Loiacono