

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2005-131

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

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 applicant's request for correction on June 29, 2005, upon receipt of his application and Coast Guard military records.

This final decision, dated April 26, 2006, is 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, now serving as a xxxxxxxxxxxxxxxx in the Marine Corps Reserve, alleged that while he was serving in the Coast Guard Reserve, a drill point that he earned during his anniversary year ending February 27, 1980, was erroneously recorded as having been earned during the prior anniversary year, which ended on February 27, 1979. Therefore, his retirement point total for his 1979 anniversary year is 113 though it should be 112, and his retirement point total for his 1980 anniversary year is 49 though it should be 50.¹ The applicant asked the Board to correct his record to show that he earned 112 points during his 1979 anniversary year and 50 points during his 1980 anniversary year.

¹ Active Reservists are required to earn at least 50 participation points in each "anniversary year" of their service for that year to count as a satisfactory year for Reserve retirement purposes. 10 U.S.C. § 12732.

The applicant stated that the error was made by the administrative office of his small boat station in xxxxxxxxxxxx. He alleged that in 1982, his commanding officer assured him that the error would be corrected before his discharge, as he was soon to receive his commission in the Marine Corps. However, in July 2004, he discovered that the error had never been corrected.

The applicant stated that as he has continued to serve and now has over twenty-six years of active duty toward a regular retirement, the requested correction “will have no effect on the government’s obligation, if any, for pay purposes, retirement, or retirement benefits. I am not currently, nor have I ever served as a civil service, civilian government employee.”

SUMMARY OF THE RECORD

On February 28, 1977, while attending college, the applicant enlisted in the Coast Guard Reserve for six years. The Statement of Understanding that he signed spells out the participation requirements per anniversary year, and defines “anniversary year” as “each period of one year from the date of enlistment.”

The applicant attended boot camp in the summer of 1977 and thereafter was assigned to a small boat station in xxxxxxxxxxxxxx, where he began to drill regularly. A Retirement Point Statement in his record shows that in his anniversary year ending February 27, 1978, he earned 22 drill points, 62 active duty for training (ADT) points, and 15 membership points for a total of 99 points.

From May 21 through August 11, 1978, the applicant performed ADT by attending an “A” School for boatswain’s mates and thereafter was advanced to BM3. The drill and ADT points shown on his Retirement Point Statements for the anniversary years ending on February 27, 1979 and 1980, appear in the chart below.

ANNIVERSARY YEARS	ADT & DRILL POINTS BY MONTH												Drill Pts.	Mbr-ship Pts.	ADT Pts.	Ann. Total
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec				
2/28/78-2/27/79	06	00 02	00	02	11	30	31	12	00	00	00	04	14	15	84	113
2/28/79-2/27/80	04	00 02	00	04	00	00	04	04	04	04	04	04	34	15	00	49

On April 7, 1980, the District Commander notified the applicant’s command that the applicant had not performed any ADT in the anniversary year ending February 27, 1980. The notification indicates that unless the applicant submitted a letter requesting ADT, he should be transferred to the Individual Ready Reserve or discharged.

On June 15, 1980, the applicant submitted a letter to his commanding officer in which he explained that he had been unable to fulfill his ADT obligation the previous year because he was a senior in college with a full-time job. He also stated that his "ignorance of the proper application process concerning deadlines, and that ADT must be accomplished within the anniversary year, not the calendar year, was a great impediment to my ADT 1979." He requested ADT beginning on August 25, 1980, and asked that it apply toward his anniversary year ending on February 27, 1980. However, his commanding officer noted on the request form that the applicant performed no ADT in the summer of 1979 and that the requested ADT would apply to the current anniversary year ending on February 27, 1981.

From August 25, 1980, through September 5, 1980, the applicant performed ADT at Station xxxxxxxxxxxxxxxx. On September 9, 1980, the commanding officer noted that the applicant had shown no motivation or interest and required constant supervision. As the applicant's attitude was one of "condescending resignation," the commanding officer asked that the applicant not be assigned to duty at his unit in the future "unless a complete turnaround in his attitude is made."

Thereafter, the applicant began to drill and perform ADT more regularly and earned satisfactory years of service toward a Reserve retirement and better performance evaluations. He was honorably discharged from the Coast Guard Reserve upon the expiration of his enlistment on February 27, 1983, and thereafter received his commission in the Marine Corps.

On August 28, 1996, a member of Congress forwarded to the National Personnel Records Center (NPRC) a request from the applicant for copies of his Coast Guard discharge papers and Reserve Earning Statements. On December 27, 1996, the NPRC responded by sending the congressman copies of the applicant's discharge and Retirement Point Statements.

VIEWS OF THE COAST GUARD

On November 16, 2005, the Judge Advocate General (JAG) of the Coast Guard recommended that the Board deny the applicant's request.

The JAG argued that the application should be denied because it was untimely and the applicant did not explain or justify his delay in requesting the correction. The JAG further argued that the applicant has not met his burden of proof because there is no evidence that the Coast Guard erred in computing the applicant's points.

In making this recommendation, the JAG relied on a memorandum on the case prepared by the Coast Guard Personnel Command (CGPC). CGPC noted that on June

15, 1980, the applicant had asked that his ADT in August 1980 be applied to the prior year, but that this request was denied. CGPC stated that the applicant "provides no justification for repositioning one point from Anniversary Year 1979 to Anniversary Year 1980 and his record does not reveal any administrative errors regarding recording of either 1979 or 1980 Anniversary Year points."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 17, 2005, the BCMR sent the applicant a copy of the views of the Coast Guard invited him to respond within 30 days. No response was received.

APPLICABLE REGULATIONS

Chapter 3-B-1 of the Reserve Administration and Training Manual (RATMAN), COMDTINST M1001.26 in effect in 1980 provided that to remain in a drilling status a member of the Selected Reserve was expected to perform at least 90 percent of his scheduled drills and 12 days of ADT per anniversary year. Enclosure (1-1) to the RATMAN defined an anniversary year as extending "from the date of entry or reentry to the day preceding the anniversary of entry or reentry." Chapter 3-B-2 provided that absence from a scheduled drill could only be "excused" and rescheduled due to illness, injury, severe inclement weather, unforeseen emergency, or death or illness of a family member.

Chapter 3-C of the RATMAN provided that a member of the Selected Reserve who, in the opinion of his commanding officer, failed to participate satisfactorily should be counseled. If no improvement was observed, the member could be transferred to the IRR, discharged for unsuitability, or involuntarily recalled to active duty for two years.

Chapter 9-D-2-b.(2) of the RATMAN provided that a "Reserve Earning Statement (CGHQ-4458A) is distributed to each reservist who has any pay or points activity during the month. It reports drill activity"

Chapter 9-D-4.a. of the RATMAN stated that a Annual or Terminal Statement of Retirement Points (CG-4175) would be prepared "approximately three months following the end of the reservist's anniversary year ... to allow time for ADT orders and correspondence courses to be entered in the system." Chapter 9-D-4.b. stated that a "reservist who finds discrepancies on CG-4175 should initiate a request, with verifying documents, to Commandant (G-RA-1) via the district commander (r)."

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 over this matter pursuant to the provisions of 10 U.S.C. § 1552.

2. The applicant has alleged that a retirement point that is now attributed to his anniversary year ending on February 27, 1979, should instead be attributed to his anniversary year ending on February 27, 1980, so that his total points for the latter year would be 50 instead of 49. An application to the Board must be filed within three years of the day the applicant discovers the alleged error in his record that he wants corrected. 10 U.S.C. § 1552(b). Although the applicant stated that he discovered the alleged error in his record in July 2004, he knew or should have known about the alleged point discrepancy no later than when he received his annual Retirement Point Statement in 1980. Moreover, documents in his record indicate that he requested and received copies of his Retirement Point Statements from the NPRC in 1996. Therefore, his application was untimely.

3. Pursuant to 10 U.S.C. § 1552(b), the Board may excuse the untimeliness of an application if it is in the interest of justice to do so. In *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that to determine whether the interest of justice supports a waiver of the statute of limitations, the Board "should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review." The court further instructed that "the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review." *Id.* at 164, 165. See also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

4. The applicant stated that he discovered the alleged error in July 2004 and provided no explanation for his delay other than that he had been told that the alleged error would be fixed prior to his separation from the Coast Guard Reserve. Under Chapter 9-D-4.b. of the RATMAN, the applicant could and should have requested correction of the alleged error from his chain of command in 1980. Even assuming, as he alleged, that he was told prior to his separation that the alleged error in his Retirement Point Statement would be corrected, he has not explained why he did not seek correction more timely or in 1996, when he apparently received copies of his Retirement Point Statements through his congressman. The Board finds that the applicant has not submitted a satisfactory explanation or justification for his delay in seeking correction of the alleged error.

5. Under 33 C.F.R. § 52.24, the Board "begins its consideration of each case presuming administrative regularity on the part of Coast Guard and other Government

officials. The applicant has the burden of proving the existence of an error or injustice by the preponderance of the evidence.” Although the applicant alleged that a drill or ADT point for which he received credit on his annual Retirement Point Statement for the anniversary year ending on February 27, 1979, should be attributed to the following anniversary year, he submitted no documentary evidence to support his allegation, and no evidence of any such error appears in his military record. Therefore, the Board finds that the applicant is very unlikely to succeed on the merits of his claim because there is nothing in the record to overcome the presumption of regularity.

6. Accordingly, due to the lack of a compelling reason for the applicant’s delay in submitting his application and due to the lack of any evidence supporting his allegation, the Board finds that it is not in the interest of justice to excuse the untimeliness of the application. The applicant’s request should be denied because it is untimely.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxx, USMCR, for correction of his Coast Guard Reserve military record is denied.

Bruce D. Burkley

J. Carter Robertson

George A. Weller