

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

Application for Correction
of the Coast Guard Record of:

BCMR Docket No. 2007-029

**XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX**

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 on November 24, 2006, upon receipt of the applicant's completed application and military records.

This final decision, dated July 31, 2007, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant asked the Board to correct his record to show that he earned the Reserve Good Conduct Medal. The applicant further requested a review of his record to determine if he were entitled to any other medals and/or ribbons.

The applicant stated that he is now in his sixties and would like to leave his medals to his three sons, each of whom has served or will serve in the armed forces.

The applicant claimed that he discovered the alleged error on October 15, 2000. He stated that he has no one to turn to except the Board and noted that he believes the Board will be fair in acting on his request.

EXCERPTS FROM THE RECORD

The applicant enlisted in the Coast Guard Reserve on April 22, 1974. He was assigned to duty in a drill pay status on April 30, 1974, with an effective date of April 22, 1974.

On April 21, 1976, the applicant reenlisted for six years. On August 31, 1977, he was assigned to the active standby pool (of the Individual Ready Reserve), at his request. He was discharged from the Coast Guard Reserve on April 21, 1982.

The applicant's retirement points statement dated October 4, 1978 shows that he earned the following points while in the Coast Guard Reserve:

4/22/74-4/21/75	100 (adjusted to 73)
4/22/75-4/21/76	77 (adjusted to 730)
4/22/76-4/21/77	57 (30 drills, 12 days active duty, and 15 gratuitous points)
4/22/77-4/21/78	29 (14 drills and 15 gratuitous points)

VIEWS OF THE COAST GUARD

On February 2, 2007, the Board received an advisory opinion from the office of the Judge Advocate General (JAG) of the Coast Guard. He recommended that the Board deny relief to the applicant. The JAG adopted the facts and analysis provided by the Commander, Coast Guard Personnel (CGPC) as the basis for the Coast Guard's recommendation.

In recommending denial of relief, CGPC noted that the application was untimely and that the applicant had failed to provide any justification for delay in bringing his claim. CGPC provided the following rationale for denial if the Board decides to waive the three-year statute of limitations and consider the application on the merits:

A complete review of the applicant's record does not substantiate his eligibility for the Coast Guard Reserve Good Conduct Medal. Pursuant to [Article 5.A.2. of the Medals and Award Manual (2002)] to be eligible for this medal, the applicant would have needed to earn 70 points each year for three consecutive years. The applicant did not earn the minimum required points for this award as indicated in his Reserve Retirement Points statement.

Also, the applicant requests any other awards to which he is entitled. The applicant's record does not reveal eligibility for any additional awards. [A September 7, 2001, letter from the Chief, Medals and Awards Division] indicates the results of a record review conducted by the Commandant (G-WPM-3) where the applicant's record was reviewed and corrected to reflect the award of the Coast Guard Meritorious Unit Commendation Ribbon. No other discrepancies with his awards were noted.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 27, 2007, the Board received the applicant's response to the views of the Coast Guard. He stated that he felt as though he made all of his drills from April 22, 1976 through April 21, 1977.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the submissions of the applicant and the Coast Guard, the military record of the applicant, and applicable law.

1. The BCMR has jurisdiction of the case pursuant to section 1552 of title 10, United States Code. The application was not timely.

2. To be timely, an application for correction must be filed within three years of the date the alleged error or injustice was, or should have been, discovered. See 10 U.S.C. § 1552, 33 CFR § 52.22.

3. The applicant stated that he discovered the alleged error on October 15, 2000, approximately 18 years after his discharge from the Reserve. He did not provide an explanation why he could not have discovered the alleged error sooner. Even if the October 15, 2000 date is accepted as the date of discovery for the alleged error, the application is still untimely because it was not filed with the Board until November 8, 2006, approximately three years beyond the statute of limitations. The applicant has not provided a reason for the delay in filing his application after allegedly discovering the error on October 15, 2000.

4. The Board may excuse the failure to file timely if it finds that it is in the interest of justice to do so. In making such a determination, the Board should consider, in addition to the length of and reasons for the delay, the likelihood of success on the merits of the claim. See Allen v. Card, 799 F. Supp. 158, 164 (D.D.C. 1992); Dickson v. Secretary of Defense, 68 F.3d 1396 (D.C. Cir. 1995).

5. With respect to the merits of the applicant's claim, the Board finds that he is not likely to prevail. The applicant has presented insufficient evidence that he earned the Reserve Good Conduct Award or that he is entitled to any other awards not already documented in his military record.

6. The Board notes that the advisory opinion sets forth the current standards for judging whether the applicant is entitled to the Reserve Good Conduct Award, which became effective on July 1, 1983. The current 2002 version of the Medals and Awards Manual states that effective July 1, 1983, three consecutive years of service in which the applicant earns a minimum of 70 points per year are required for a Reserve Good Conduct Award. However, the applicant was in the Reserve from April 22, 1974 until April 21, 1982. Therefore, the Board finds that the 1995 Medals and Awards Manual is more applicable to the applicant's case. Even though the 1995 Manual was issued after the applicant's service in the Reserve, it contains specific provisions that are applicable to the period in which the applicant served. Section 9.2.e. of the Medals and Awards Manual (1995) states, "eligibility for periods of service ending between inclusive dates February 1963 and December 31, 1979, requires four consecutive anniversary years in the Coast Guard Reserve . . . All other criteria are the same." The other pertinent criteria were that from November 1, 1963 to June 30, 1983, reservists were required to perform 12 days of active duty and attend 90 percent of scheduled drills to be eligible for the Reserve Good Conduct Award.¹

¹ Enclosure (8) to the Medals and Awards Manual (1995) contains a chart that shows the various requirements for the Good Conduct Award at specific junctures. The chart shows that from November 1, 1963 to December 31, 1979, four years of continuous service was required to earn a good conduct award and that from January 1, 1980 until June 30, 1983, three years of continuous service was required.

7. The applicant did not complete 90 percent of his yearly scheduled drills for each of four consecutive anniversary years;² nor did he complete 12 days of active duty for each year of the four-year period. Reservists are normally scheduled to attend 4 drills per month for an annual total of 48 drills per year³ and perform 12 days of active duty each year. Therefore, for the period from April 22, 1974 through April 21, 1978, the applicant would have needed to attend 43 drills each year for four consecutive anniversary years as well as perform 12 days of active duty each year for four consecutive years to qualify for the Reserve Good Conduct Award. The applicant's retirement points statement shows that for the anniversary year ending April 21, 1977 he attended only 30 drills and for the anniversary year ending April 21, 1978, he attended only 14 drills and performed no active duty. The retirement points statement shows that from April 22, 1978, until his discharge on April 21, 1982, the applicant earned no points. Based on the evidence of record, the applicant is not likely to prevail on the merits of his application because he has not proved that he earned the necessary points to be entitled to the Award. Even if the Board were to apply the current standards as suggested by the Coast Guard, the applicant still would not be eligible for the Reserve Good Conduct because he did not earn 70 points each year for three consecutive years, as required by the current Medals and Awards Manual.

8. With respect to other awards to which the applicant may be entitled, the Coast Guard has determined that he is not entitled to any that have not already been awarded and documented in his service record. The applicant has not presented any evidence to prove that the Coast Guard's determination is incorrect.

9. Based on the length of the delay, the lack of any persuasive reason for not filing his application sooner, and the probable lack of success on the merits of his claim, the Board finds it is not in the interest of justice to waive the statute of limitations in this case.

10. Accordingly, the applicant's request should be denied because it lacks merit and because it is untimely.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

² An anniversary year extends from the date of entry or reentry into the Reserve to the day preceding the anniversary of entry or reentry. See Enclosure (1-1) to the Reserve Administration and Training Manual.

³ Article 4-A-1 of the Reserve and Administration Training Manual then in effect stated that "Selected Reserve member shall be scheduled for an average of four drills for each month and 48 drills during each anniversary year."

ORDER

The application of former XXXXXXXXXXXXXXXXXXXX, USCGR, for correction of his military record is denied.

Bruce D. Burkley

J. Carter Robertson

Dorothy J. Ulmer