

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2003-109

FINAL DECISION

Ulmer, Chair:

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 application was docketed on July 7, 2003, upon receipt of the applicant's father's completed application and the applicant's military records.

This final decision, dated April 15, 2004, is signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant's father requested that the applicant's military record be corrected to show that her death occurred in the "line of duty" (while in a duty status). The Coast Guard determined that the applicant was not in a duty status at the time of her death and issued a Casualty Report to that effect.

APPLICANT'S ALLEGATIONS

The applicant was a reservist not serving on full-time active duty. The applicant's father alleged that the finding by the Headquarters' Decedent Affairs Officer that the applicant was not in a duty status at the time of her death was erroneous. He noted that the applicant's commanding officer (CO) and the Commander, United Coast Guard District 13 ruled that the applicant's death occurred in the line of duty.

In a statement to the Board, the applicant's father described the circumstances of the applicant's death as follows:

[The applicant] was killed in a car accident where she was a passenger in her own car. Her friend who was driving was an active duty CG [Coast Guard] member he was also killed in the accident.

[The applicant] was on IDT [inactive duty training] for the weekend and had just left the unit to pick up her friend and give him a ride back to Port Angeles to his ship which was underway for operations. The accident occurred at 2001 hours on Jan 11, 2003. [The applicant] was scheduled for drill that weekend starting at 0600 hours 01-11-03 and ending at 1700 hours 01-12-03. She had orders to start title 10 (active duty) at 0700 on 01-13-03.

[The applicant's] unit ruled her death as line of duty and sent out a message stating so. Their reason was that her unit is on alert and was deploying shortly and [she] was subject to immediate recall, and that she was under unit orders for the entire weekend. [The applicant] was required to have her cell phone with her. She was allowed to depart the duty station with the understanding that she could be recalled at any moment and was not released from duty . . .

The 13th Coast Guard District agreed, but [Headquarters] denied the claim and said since [the applicant] had left work and went by her residence she was no longer covered as active duty or on reserve status, so she was denied any coverage or compensation.

The [Headquarters] ruling was made by a civilian employee who did not have an understanding of the status or working situation of a Port Security Unit, and who used a very strict reading of the Title 10 Law. I also received an Honorable Service Citation from the Secretary of Transportation stating in part "Who died while in the service of our Country as a Member of the United States Coast Guard." I believe this is an acknowledgment as to [the applicant's] "line of Duty" death status . . .

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard Reserve on April 22, 2002. She was a reservist not on full-time active duty. She was assigned to Port Security Unit 313 where she completed one day of a two-day weekend drill with her unit located in Tacoma, Washington. Later that evening, January 11, 2003, she was killed in an automobile collision. She was a passenger in her own automobile that was being used to transport an active duty friend from the Seattle-Tacoma Airport to his duty station in Port Angeles, Washington. (The friend was also killed in the accident.) According to the

accident report, the collision occurred at 2010 on January 11, 2003 in Sequim, Washington.

In the early morning hours of January 12, 2003, the applicant's unit informed Commander, Coast Guard District 13 of the applicant's death. The message also stated that the CO had determined the death to be "line of duty." The CO explained that the applicant was "active duty, [member] on IDT status with Title [10] recall to commence on 12 January 03 [in support of] of Enduring Freedom/Southern Watch."

On January 13, 2003, the Decedent Affairs Program Manager prepared a Casualty Report. He determined the applicant's death to be "line of duty" but that she was not in a duty status at the time of her death. (The applicant's father pointed out several inaccuracies in the Casualty Report, such as incorrectly listing the applicant's place of birth, race, sex, and place of entry into the military service. He also stated that the cause and circumstance should read, "Member was a passenger in a vehicle" rather than the phrase "members vehicle hit guard rail".)

As stated in the Coast Guard's advisory opinion (discussed later), on January 14-17, 2003, several email conversations about the applicant's duty status occurred between the applicant's unit and Headquarters program managers. The ultimate determination by the Coast Guard was that based on current law and regulations, [the applicant's] death did not take place while she was in a duty status.

On February 18, 2003 the applicant's father filed a claim with the Department of Transportation for the costs of the applicant's funeral (\$7,680), and the one time government death benefit (\$6,000). Apparently, the claim was denied.

VIEWS OF THE COAST GUARD

On November 26, 2003, the Judge Advocate General (TJAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's father's request.

TJAG argued that the applicant's father had failed to carry his burden of persuasion and should have his request denied. He also argued that absent strong evidence to the contrary, government officials are presumed to have carried out their duties correctly, lawfully, and in good faith. In recommending denial of the request, he further stated the following:

Federal law determines what benefits are available to Coast Guard Reservists and under what conditions. Unlike active duty members, reservists "put on" and "take off" their military status. Whenever a case

involving one of these "citizen soldiers" is involved, it is always necessary to determine the individual's status as a threshold question. In this case [the applicant] was acting as a citizen at the time of her death. There is nothing pejorative in this determination. She did nothing wrong and in fact was helping an active duty Coast Guardsmen when she died, but she did so in her own private capacity -- not under orders . . . [The applicant] completed her military duties when her drill ended. Had she driven directly home, she would have been considered in a duty status until she arrived [there]. When she decided to do something different, she stopped being [SNYN applicant's name], Coastie and became [applicant's name] citizen, even if her voluntary actions as a citizen were to lend a hand to an active duty Coast Guard friend.

TJAG stated that the Coast Guard engaged in an internal struggle between what it would have liked to do and what its duty was under the law. He stated that the applicant was a valued member of the Coast Guard, but the law does not allow the Coast Guard to pay the benefits requested by the applicant's family.

TJAG attached as Enclosure (1) to the advisory opinion, comments from the Commander, Coast Guard Personnel Command (CGPC). CGPC recommended denial of this application on the following grounds:

Reserve Policy Manual, COMDTINST M1001.28, date March 28, 1997. This was the version of the Reserve Policy Manual in effect at the time of [the applicant's] accident. IDT consists of single and multiple drills (a drill is a four hour period of duty), and appropriate duty performed at Coast Guard units, the Selective Service System, or other inter-service units. IDT is designed to promote military readiness, professional development or advancement, and provide military structure for administrative services. Travel time to and from a regularly scheduled drill or training site is not creditable toward minimum duration criteria.

Per Title 37 Section 206 [United State Code] -- Reserves; member of National Guard; inactive-duty training, a member of a reserve component of a uniformed service who is not entitled to basic pay, is entitled to compensation for a regular period of instruction that the member is scheduled to perform but is unable to perform, because of physical disability resulting from an injury, illness, or disease incurred or aggravated while traveling directly to or from that duty or training.

Coast Guard Personnel Manual COMDTINST M1000.6A, Chapter 18.A.4.(6), Death Occurring While Traveling to and from Active Duty for Training and Inactive Duty Training. Any member of the Coast Guard

Reserve, who, when authorized or required by competent authority, assumes an obligation to perform active duty for training or IDT and who dies from an injury incurred while proceeding directly to or directly from such active training or IDT. Section 4.b. Eligibility. The member's death must have occurred while on active duty, active duty training or IDT. In case of IDT, the gratuity is payable if death occurs within 120 days and is the result of injury received during training. The [applicant] is not eligible for death gratuity benefits. She was not in a duty status as prescribed in the Personnel Manual, because she was not authorized, under orders, to transport the active duty member to his unit from the airport.

CGPC attached several documents to his comments. One was the Casualty Report from the applicant's unit to Commander, Coast Guard District Thirteen dated January 12, 2003. Paragraph B. of the message stated the following:

Active Duty, [member] on IDT status with Title 10 recall to commence on 12 Jan 03 ISO Enduring Freedom/Southern watch. [Member] was transporting crew-member of USCG active . . . returning from training to meet cutter in Port Angeles, WA. Immediate cause of death: Traffic Accident.

An email message from an Integrated Support Command Seattle LCDR to the Headquarters Compensation Division described drills at the applicant's unit as follows:

The PSU drills for officers begin Friday afternoon, for enlisted personnel Saturday morning, and end Sunday evening. One of the unit's past CO's identified operational requirements that justified the 24-hour drill days. This is similar to Reservists assigned to cutters who receive training underway for the weekend. Having the Reservists on call for the weekend allows them to have all members available for standing watches ([the applicant] was included in the watch schedule), underway ops, night shoreside security patrols including areas outside their training site, and completing PQS requirements. Op tempo has increased since the unit has been notified (classified) as to operational status. Members know they are on call with the unit throughout the weekend and can be called to report at any time. In this case, [the applicant] was authorized by the PSU to depart the reporting area and transport her friend to his duty station, CGC, ACTIVE, in Port Angeles.

A Headquarters Compensation Division Commander (CDR) replied to the LCDR's message stating that the applicant was not in a duty status at the time of her death. He also stated the following:

I don't think that sending personnel home from a drill site on a unit training weekend keeps them in any kind of duty status where they could be involuntarily ordered back into an IDT status, even if the unit plan is to reassemble the following day . . . Nowhere in the RPM did I find any mention of or authority for granting liberty or permissive duty to a member ordered to perform IDT. In my experience (over 20 years as an RPA) a reservist who departs an IDT site is, in fact, not in an IDT status except when traveling on a reasonably direct route home following release from single or multiple drills, unless such departure is pursuant to TAD orders.

If a PSU CO thinks it necessary to keep everyone in a duty status for unit readiness on unit IDT weekends, then unit members must be required to remain overnight and not [be] excused to go home at the end of day's training. Once members are authorized to depart an IDT site, their status is different from reservists who augment cutters underway - where there is obviously no opportunity to go ashore. Failure to require all hands to remain aboard their IDT site or to provide written authority for duty away from an IDT site sets us (the CG and Reserve) up for ambiguous situations such as we have with the untimely death of this young CG reservist.

CGPC noted that the distance between the applicant's residence and her drill site was approximately 14 miles. He submitted a map showing that the accident occurred approximately 85 miles past the applicant's home. CGPC stated, "The record indicates that [the applicant] departed her unit after completing her drill and traveled to Seattle-Tacoma International Airport, the opposite direction from her residence, and then proceeded towards Port Angeles.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 22, 2003, the Board received the applicant's father's response to the views of the Coast Guard. He stated that he has met his burden of proof and that he believed that the Coast Guard "failed to conduct a proper and thorough investigation into the matter."

The applicant's father stated that the applicant was under official orders during the drill weekend. As proof of this he submitted a plan of the month for June 2003 with the words "This document constitutes official Military Orders per Commandant Instructions." He stated that all earlier plans of the month were like the one he submitted. He further stated the following:

[The applicant] was not released from duty, but was ordered by her supervisors to stay in phone contact for immediate recall to the unit, but was allowed to leave to assist the active duty Coast Guard member with transportation to his ship. [The applicant] was being deployed to the Gulf and all members were on recall status, the Admin staff was working extra hours and days to prepare the proper paperwork for their members. The Coast Guard fails to see that an order by a superior places [the applicant] in an active duty status at the time of her accident.

The applicant's father argued that PSU units are different from normal Coast Guard Reserve units because of their 24-hour watches, which subject personnel to recall during the drill weekend from Friday night to 1800 hours or later on Sunday night. Therefore, he asserted that the applicant's death occurred in the line of duty (duty status) and that relief should be granted.

APPLICABLE LAW

Reserve Policy Manual (RPM) (COMDTINST M1001.28B)

Article 2.A.1 states that IDT (Inactive Duty for Training) consists of single and multiple drills, and appropriate duty performed at Coast Guard Units, the Selective Service System, or other inter-service units. IDT is designed to promote military readiness professional development or advancement, and provide military structure for administrative services. It further states that travel time to and from a regularly scheduled drill or training site is not creditable toward minimum duration criteria. This provision further states that IDT is a period of duty, under orders, scheduled for the performance of training augmentation, formal training and administration (including SWE participation), and/or other activities in support of Coast Guard missions.

Article 6.A.2b. Defines duty status as follows:

For purposes of this chapter [INCAPACITATION BENEFITS]: A member is considered to be in a duty status during any period of active duty or inactive duty; while traveling directly to or from the place that duty is performed; while remaining overnight immediately before the commencement of duty, or remaining overnight between successive periods of inactive duty at or in the vicinity of the site of the inactive duty.

Line of duty is defined, in Article 6.A.2.g., as a finding after all available information has been reviewed that determines an injury, illness, or disease was incurred or aggravated while in an authorized duty status, and was not a preexisting condition or due to gross negligence or misconduct of the member.

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 section 1552 of title 10 of the United States Code. The application was timely.

2. The applicant was a reservist who performed monthly weekend drills (inactive duty training (IDT)) with a PSU (port security unit). On January 11, 2003, she had completed the first day of her two-day scheduled weekend drill, when she was killed in an automobile accident at approximately 8:00 p.m. (2000 hours) more than 50 miles from her drill site. The Coast Guard has refused to pay the death gratuity and funeral expenses because of its determination that the applicant was not in a duty status at the time of her death.

3. Based on the regulations, the Board finds that the Coast Guard did not commit an error or injustice in this case by finding that the applicant was not in a duty status at the time of her death. Article 6.A.2.b. of the Reserve Policy Manual (RPM) states that "a member is considered to be in a duty status during any period of active duty or inactive duty while traveling directly to or from the place that duty is performed; while remaining overnight immediately before commencement of duty; or [while] remaining overnight between successive periods of inactive duty at or in the vicinity of the site of the inactive duty." For the reasons discussed below, the Board finds that the applicant did not meet any of the circumstances of Article 6.A.2.b, and therefore was not in a duty status at the time of her death.

4. The applicant had completed her drill at approximately 1630 on January 11, 2003, and had left the duty site. The plan of the month for June 2003, submitted by the applicant's father, shows that Saturday drills commenced at 0730 and secured at 1630. The Sunday drills commenced at 0745 and secured at 1630. If the same held true for the January 11 and 12 drills, as the applicant's father stated, the applicant's January 11, 2003 drill secured (members were dismissed) at 1630 that afternoon.

5. There is no evidence that the applicant was traveling directly to or from duty at the time of her death. The evidence is persuasive that the applicant had secured from her drill at approximately 1630 on January 11, 2003 and either had not traveled directly to her home from duty or had traveled beyond her home. As the Coast Guard pointed out, the accident occurred more than 50 miles from her duty station. The distance between the applicant's residence and her duty site was approximately 14 miles, as stated in the advisory opinion.

6. A member may be in a duty status while remaining overnight immediately before commencement of duty, or while remaining overnight between successive periods of inactive duty at or in the vicinity of the site of the inactive duty. Since the applicant was more than 50 miles from her duty site at 2000 hours on the date of her death, she was neither in close proximity to her duty site nor was she near the commencement of her duty, which was scheduled for 0745, the next morning, January 12, 2003. She, therefore, met none of the requirements listed in the RPM for being in a duty status.

7. The applicant's father argued that the applicant was not released from her January 11 drill, because she was ordered by her supervisors to stay in telephone contact with them for immediate recall. According to the father, she was allowed to leave to assist an active duty member with transportation. The LCDR from the applicant's unit never stated that the applicant was in a duty status after the drill had secured. Instead, she stated that the applicant was subject to recall. The LCDR's statement that the applicant was authorized by PSU to depart the reporting area and transport her friend to his duty station simply means that if an emergency arose the unit knew that the applicant would not be available.

8. However, the Court in Andrews v. United States, 4 Cl. Ct. 114 (1983), recognized the military's control or right to control a reservist as a factor in determining a member's duty status. In Andrews, the plaintiff had orders for a two-day period of inactive duty away from his home drilling site. After the training exercise secured the first day, the plaintiff, who had missed dinner made a short "chow run" off site and was injured on the return. The Court ruled for the plaintiff stating that

the military clearly had the right to control plaintiff. It cannot be doubted that had plaintiff left Camp Smith without authorization he would have been subject to military disciplinary action. He was billeted at Camp Smith and was expected to be there at all times unless authorized to be else where . . . It cannot be said that plaintiff reverted to his normal civilian status during this abbreviated "chow run" . . .

In the present case no evidence has been presented describing the amount of control the Coast Guard had over the members of the unit once the drill was secured. For instance, there is no evidence whether the members of the unit were required to remain on base or near the duty site, what activities they could or could not participate in once the drill had secured, or what would happen to them if they could not be reached by telephone. Even if the applicant was told that it was okay to transport her friend to another town, it was not for government business. She was not given orders for this mission, as required by Article 2.B.5 of the RPM, which states, "Reservist who

are ordered to locations other than their normal drill sites shall be placed on TDY orders."

9. The father's argument that the applicant was never released from the January 11 drill conflicts with the June 2003 partial plan of the month for the PSU, which he stated was like the January 2003 plan of the month. The June 2003 partial plan of the month shows that Saturday drills secured at 1630 and there is nothing in the plan of the month at all about members staying in telephone contact or limiting their movement once drill had secured. There is insufficient evidence establishing that the applicant was under military control at the time of her death.

10. There is some evidence that the applicant had orders to begin a period of active duty on January 12 or 13, 2003. However, there has been no evidence presented that she had commenced serving on these orders at the time of her death.

11. The applicant's father also raised the issue that the applicant's CO and Commander, Coast Guard Group Thirteen, determined that her death was in the line of duty, meaning she was in a duty status. However, this was an interim determination as permitted under Article 6.A.2.f. of the RPM. The Commandant or his delegate makes final determination with respect to duty status.

12. The applicant's father has failed to prove an error or injustice on the part of the Coast Guard. Accordingly, the applicant's father's request for the correction of the applicant's military record should be denied.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

The application of XXXXXXXXXXXXXXXXXXXX for the correction of the military record of XXXXXXXXXXXXXXXXXXXX, USCG (deceased) is denied.

Thomas F. Muther, Jr.

Adrian Sevier

Thomas H. Van Horn