

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2005-149

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

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 August 15, 2005.

This final decision, dated June 1, 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, a member of the Coast Guard Reserve, asked the Board to correct her record to show that she earned at least 50 points in her anniversary year (AY) of service ending on March 6, 1998 (AY 1998). She alleged that points she earned for AY 1998 were mistakenly attributed to the following anniversary year, which ended on March 6, 1999 (AY 1999). This mistake caused her point total for AY 1998 to be less than 50 so that the year does not count as a satisfactory year toward retirement. The applicant alleged that she has been trying to get this error corrected since 1999 to no avail.

The applicant alleged that if the Board grants her a satisfactory year for AY 1998, she would also be entitled to (a) another Reserve Good Conduct Medal, which would improve her standing in the servicewide examinations; (b) a second Armed Forces Reserve Medal dated one year earlier; and (c) an earlier date of completion of 20 years of satisfactory service toward retirement.

The applicant stated that during the first three months of AY 1998, she was living in the Xxxxxxx and was assigned to drill at the Marine Safety Office (MSO) in Xxxxxx.

However, in June 1997, she moved to the Los Angeles area. Therefore, on July 10, 1997, she promptly mailed to the administrative office of the MSO in Xxxxxx a request for a transfer to a unit in California. In addition, she followed up on her written request with a telephone call to the administrative office and was told that the new assignment officer would process her request when he returned from leave. However, she received no response. Therefore, on September 26, 1997, she sent a second formal request for a transfer to xxxxxxxxxxxxxxxx in Alameda, California. She kept in touch with both the MSO and XXXXX to try to expedite the transfer and was assured by an administrative officer at XXXXX that her request would be endorsed. However, her transfer was not effective until January 1, 1998, and the orders she received on December 14, 1997, instructed her not to report for duty to XXXXX until January 24, 1998.

The applicant alleged that because of the Coast Guard's unreasonable delay in transferring her, she was not able to perform enough drills (inactive duty for training or IDT) and active duty for training (ADT) to earn 50 points during AY 1998. She pointed out that the Coast Guard Correspondence Manual states that correspondence should be replied to within 15 days, whereas she did not get orders to report to a new unit until more than five months after she submitted her request for transfer and was not permitted to begin drilling until six months after her request.

The applicant stated that because of the Coast Guard's delay, she was very concerned about earning enough points to complete a satisfactory year. Therefore, upon reporting to XXXXX on January 24, 1998, she asked to be allowed to perform extra drills and two weeks of ADT so that her AY 1998 would be satisfactory for retirement purposes. However, the chief administrative officer told her that he "did not have extra work for [her] to do" and "did not give [her] permission to do more drills until it was too late to make up [her] lost drills and this was an administrative error on his part." Instead, he assigned her to perform IDT by taking some computer classes that began during AY 1998 but ended during AY 1999. The applicant stated that the chief "was under the misunderstanding that even IDT could be assigned according to the needs of the unit."

In addition, the applicant stated, the chief assigned her ADT according to the needs of the unit, which was not until April 1998, during AY 1999. She stated that the chief told her that her ADT in April 1998 would be counted toward her AY 1998, and that the orders she received stated as much. Under the old Reserve Administration and Training Manual (RATMAN), she alleged, reservists were allowed to perform their annual ADT requirement outside of the actual anniversary year as long as it was "within a certain window of time" and have the ADT count toward the anniversary year. However, unbeknownst to her and the chief administrative officer, this policy had changed in 1997, and contrary to the orders he issued, her ADT in April 1998 was attributed to AY 1999 instead of AY 1998.

The applicant stated that if the IDT (drills) she performed between January 24 and March 16, 1998, and the extra ADT she performed in April 1998 were attributed to her AY 1998, which ended on March 6, 1998, that year would be satisfactory for retirement purposes. She alleged that she should receive credit for 14 days of ADT in April 1998, instead of 12 days, because (a) her travel voucher was for 13 days since she crossed the international date line and had two May 1sts; and (b) she did not get credit for one day of travel time to her home, which should have been included in her ADT orders but was not.

The applicant further alleged that the Coast Guard recently attempted to correct the error by adding 12 days of ADT to her point summary for AY 1998 without subtracting them from AY 1999.

The applicant stated that she currently needs just one more day of drills to make her AY 1998 satisfactory for retirement purposes. She stated that she has always done more than was required of her and so "one more day of drill credit is very little to ask for." She also stated that she had to travel for a day just to drill at XXXXX and never received credit for those travel days since it was voluntary. In support of her allegations, the applicant submitted the following:

- Travel documents indicating that she moved to California in June 1997.
- A "Request for ADT/SADT/TEMAC Orders" dated July 10, 1997, with the last words crossed out and the word "Transfer" inserted by hand so that the title reads "Request for Transfer." The applicant requested a transfer "as soon as possible" to the Long Beach/San Pedro area just south of Los Angeles. The form indicates that her address was in Xxxxxx, California, a suburb of Los Angeles.
- A "Reserve Information Worksheet" dated September 26, 1997, requesting transfer to XXXXX in Alameda, California, in Oakland's inner harbor off San Francisco Bay. On the form, the applicant noted that it was her "second formal request for a transfer" and that she was concerned she might have an unsatisfactory year if she could not make up some drills. She stated that she was available to drill and/or train immediately. She listed her home address as Xxxxxxxx, California, which is southwest of Los Angeles and about 470 miles south of Alameda. Her request was endorsed by the command the same day.
- Assignment Orders dated December 14, 1997, assigning the applicant to XXXXX and ordering her to report there on January 24, 1998. The orders noted that "no travel or proceed time is authorized in the execution of these orders."
- An email dated December 15, 1997, from the Integrated Support Command in Xxxxxx noting that the applicant would be assigned to XXXXX effective January 1, 1998. The email states, "Apparently, [the applicant] submitted a CG-5525 (CG Reserve Assignment Request and Orders) that never got to us."
- Pages from the Coast Guard Correspondence Manual, which states that correspondence should normally be answered within 15 work days.

- Endorsed travel orders that stated the applicant was to report on April 19, 1998, for thirteen days of ADT-OTD in Korea. The orders state that of the thirteen days “12 days ADT-OTD to satisfy AT [annual training] requirement for RQA AY ending 3/7/98.”
- A Travel Voucher with an itinerary showing that she would leave home on April 19, 1998, and arrive home on May 1, 1998 (which amounts to 13 days, inclusive).
- A series of email messages beginning in June 2004 regarding her requested correction.

SUMMARY OF THE RECORD

On March 7, 1980, the applicant enlisted in the Coast Guard Reserve. A Retirement Point Statement printed from the Coast Guard’s database on November 9, 2005, shows that, with the exception of her anniversary year ending on March 6, 1998, she has earned satisfactory years of service toward retirement in each anniversary year since her enlistment and therefore now has 25 satisfactory years of service for retirement purposes. Her point summary shows that in AY 1998, she earned 22 drill points, 15 membership points, and 12 ADT points for a total of 49 points. For AY 1999, she is credited with 44 drill points, 15 membership points, and 29 ADT points. Notations on the point summary indicate that 12 days of ADT that the applicant performed in April 1998 had been erroneously credited to both AY 1998 and AY 1999, making her ADT for those two anniversary years total 41 days when in fact she performed only 29 days of ADT and all were performed in AY 1999.

A Retirement Point Statement printed from the Coast Guard’s database on May 18, 2006, however, contains a point summary showing that in AY 1998, the applicant earned 22 drill points, 15 membership points, and zero active ADT points for a total of 37 points. For AY 1999, she is credited with 44 drill points, 15 membership points, and 29 ADT points.

VIEWS OF THE COAST GUARD

On January 1, 2006, the Judge Advocate General (JAG) of the Coast Guard recommended that the Board deny the applicant’s request.

The JAG stated that the application should be denied due to its untimeliness because the applicant “failed to submit a timely application and has failed to show why it is in the interest of justice to excuse the delay.” He pointed out that the applicant submitted no evidence to support her claim that she has been diligently attempting to correct the alleged error since 1999 except an email conversation that began in June 2004. The JAG further stated that a cursory review of the merits indicates that the applicant has no reasonable chance of prevailing on the merits. Therefore, the Board should find that it is not in the interest of justice to excuse her delay.

The JAG further noted that absent evidence to the contrary, government officials are presumed to have “carried out their duties correctly, lawfully, and in good faith.” *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979). The JAG stated that the applicant bears the burden of proving error or injustice and argued that she “offers no evidence that the Coast Guard committed any error or injustice. The fact that it took five months for Applicant to be reassigned does not constitute an administrative error by the Coast Guard. Applicant offers no evidence to overcome the presumption of regularity afforded the assignment officer.”

Regarding the applicant’s participation in AY 1998, the JAG stated that she performed neither IDT nor ADT during the first three months of AY 1998 before she moved to California. After moving to California, she waited six weeks to request a transfer and then used the wrong form to do so. She used the correct form to request a transfer on September 26, 1997, and received new assignment orders on December 14, 1997.

The JAG also stated that in AY 1998, the Reserve Policy Manual (RPM) was in effect, and Article 8.C. of the RPM required reservists to earn 50 points during the actual anniversary year to have the year qualify as satisfactory for retirement purposes. The JAG stated that therefore the applicant’s ADT in April 1998 may only be applied to her AY 1999 as it occurred six weeks after her AY 1998 ended.

In making his recommendation, the JAG relied on a memorandum on the case prepared by the Coast Guard Personnel Command (CGPC), which the JAG adopted. CGPC stated that to understand this case, it is “important to distinguish satisfactory participation from satisfactory service towards a Reserve retirement.” Under Article 4.A. of the RPM, “satisfactory participation” required attendance at 43 IDT drills and completion of at least 12 days of active duty or ADT, which was known as the annual training (AT) requirement, during an anniversary year. These were the minimal participation standards that reservists had to meet to remain qualified for continued service in the Selected Reserve. Under Article 3.B. of the RPM, members could meet their AT participation requirement for an anniversary year by performing their 12 days of active duty or ADT up to 120 days before or after the anniversary year. CGPC stated that the “authority to credit active duty periods 120 days before or after an anniversary year was relevant only in the context of participation standards.” In addition, members could request a waiver of the AT participation requirement under Article 3.B.

On the other hand, CGPC stated, satisfactory service for retirement purposes requires an accumulation of 50 retirement points in an anniversary year, in accordance with 10 U.S.C. § 12732 and Article 8.C. of the RPM, and completion of the AT requirement. CGPC explained that “to earn a satisfactory year for retirement, Applicant had to

complete AT (a yes/no event) AND earn 50 retirement points worth of duty during AY98. While retirement credit can only be awarded in the anniversary year in which it is earned, the 120-day rule provided Applicant 120 days before/after AY98 to demonstrate completion of AT. Applicant's orders ... correctly applied this 120-day rule because the duty occurred within the 120-day period after AY98 terminated." CGPC stated that the orders show that the applicant's ADT in April 1998 allowed her to meet her AT requirement for AY 1998 even though it ended on March 6, 1998, but "it was not intended to also award retirement point credit for AY98." CGPC stated that the retirement points that the applicant earned for that period of ADT can only be applied to AY 1999 as "[n]either statute or Coast Guard policy authorize[d] the crediting of points earned in one anniversary year to a different anniversary year. ... To do so would be contrary to policy and statute."

CGPC stated that its review of the applicant's records on November 9, 2005, determined that she performed no IDT or ADT between January 10, 1997, and January 24, 1998. She had been credited for a total of 49 points in AY 1998, including 15 points for membership, 22 points for IDT drills, and 12 days of ADT. CGPC stated that the attribution of the retirement points for the 12 days of ADT in April 1998 to AY 1998 instead of AY 1999 was an administrative error. CGPC stated that her thirteenth day of ADT (May 1, 1998) is properly attributed to AY 1999. CGPC stated that a corrected retirement point statement for the applicant's AY1998 would show credit for 15 points for membership, 22 points for IDT drills, and zero points for ADT. Therefore, CGPC stated that the applicant actually earned only 37 retirement points in AY 1998 rather than 49.

Regarding the alleged delay in the applicant's transfer, CGPC stated that "[o]rders to serve in a billet or to perform duty are issued when the needs of the service require the assignment. Applicant's new assignment officer had a responsibility to ensure that Applicant was fully qualified to fill a specific, vacant billet. The unit to which Applicant was assigned was responsible for ensuring that she was properly processed in, and that her training schedule, including IDT and active duty, met the needs of Applicant's billet qualifications." CGPC also pointed out that the applicant did not inform the Coast Guard that she was moving or had moved until six weeks after the fact. CGPC stated that the fact that after she notified the Coast Guard of her move, she waited five months for a new assignment and another month for a report-in date does not constitute an administrative error. In addition, CGPC stated that the new command's failure to ensure that that she could earn a satisfactory year for retirement purposes between her report-in date, January 24, 1998, and the end of AY 1998 on March 6 was not an administrative error.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 27 and 30, 2006, the applicant responded to the views of the Coast Guard and stated that she strongly disagreed with them.

The applicant alleged that her application was timely because she was required to exhaust all administrative remedies before filing her application. She stated that she has "been exhausting for five years my CG administrative remedies as required. As soon as I exhausted my remedies I filed my BCMR application." The applicant submitted the following documents "to establish a continuum of timely filings" since 1999:

- A letter from the applicant to a Rear Admiral dated November 23, 1999, concerning her ideas regarding the unit's medical records system, lack of an examination and educational program, lack of reimbursement for berthing, etc. Her discussion of berthing reimbursement stated the following:

Furthermore, revolving around the same issue, and due to my superiors' lack of timely action, I ended up with an unsatisfactory year. For two years while working in the Xxxxxxx, I would go to extremes to maintain satisfactory years with the CG. To do my IDT/ADT, I would pay out of my own pocket for a round-trip ticket from Majuro to Kwajalein. In Kwajalein, I would pay out of my own pocket for one to three nights of berthing while I waited to be scheduled for a military flight to Xxxxx (where I was stationed at MSO Xxxxxx). To get back to Majuro I would reverse the process. For two years to maintain good standing with the CG I gave up all of my vacation time and home time (except about two weeks) to drill in Xxxxx. All of this came to nothing because when I was transferred to Alameda, admin did not do anything in a timely fashion to schedule my drills. I got an unsatisfactory year because nobody cared enough or knew enough to do anything for me.

- A letter from the applicant to the Coast Guard's Human Resources Services and Information Center (HRSIC) dated September 6, 2000, stating the following:

In reviewing my Summary of Points, I have found so many discrepancies that I think it is necessary to do them all again. ... My entire first year with the Coast Guard has been left out of my Summary of Points. ... All of my correspondence course points have been left out. ... My present concern is my [ADT] points. Please review the orders I have sent you with my [ADT] points. I am especially concerned with the years that I have been given 0 points. I have enclosed a summary of what my [ADT] points maybe should look like. Please review them with the orders I have sent you. ...

- A letter from HRSIC to the applicant dated December 29, 2000, stating that the "reserve point adjustment requested in [her letter dated September 6, 2000] has been reviewed and corrections to include proper credit of your reserve service completed. ... In accordance with [the Reserve Policy Manual], all periods of active duty must be credited in the anniversary year in which they were completed and cannot be moved.

- A letter from the applicant to HRSIC dated January 27, 2001, in which she requests corrections for AY 1981 and AY 1985. No mention is made of AY 1998.
- An email from the applicant to a commander dated February 21, 2001, in which she complained that another member purposefully shredded a letter concerning her mixed up retirement points that needed to be changed because another member's points had been attached to the letter instead of her own.
- A letter from the applicant to HRSIC dated March 18, 2001, in which she asked HRSIC to review her points for AY 1981. No mention is made of AY 1998.
- A letter from HRSIC to the applicant dated July 27, 2001, noting that the requested adjustments for AY 1981 had been made.
- A discrimination complaint the applicant filed on August 27, 2001, in which she alleged that another enlisted member and an officer at her new unit in San Diego had discriminated against her by blocking her attempts to get her retirement points statement corrected so that she could get a "20-year letter." She stated that HRSIC needed to correct her point summary for AY 1981 so that she could get her 20-year letter and Armed Forces Reserve Medal. In the complaint, the applicant also mentioned that she got a "bad year due to CG negligence." She complained about the delay in her assignment orders to XXXXX and the fact that she was not given "make-up drills" to allow her to receive a good year for AY 1998. She stated that she did not have a "normal progression of drills" in AY 1998 because she was living in the Xxxxxxx and

could not fly in [to Xxxxx] on drill weekends because [of the schedule and cost of flights]. ... It took great effort on my part to stay active with the CG while I worked in the Xxxxxxx. I was very committed to the CG and I thought it was worth the effort. For two years I nearly gave up all of my vacation time to drill. I had permission to do all of my drills on my vacation times. ... Alameda has purged my record and returned both of my transfer requests to me. ... Ideally I should have stopped in Xxxxx and did all my drills before returning to California and I did think about this [but did not because she did not want to put her dog in quarantine in Xxxxx and her household goods were being shipped to California]. It was not practical for me to continue to make extraordinary efforts to keep drilling with the CG at this point. But my request to transfer and to begin drilling at Alameda was made in a timely fashion but the CG did not respond in a timely fashion.

- A letter from the Area Commander to the applicant dated November 20, 2001, regarding an informal resolution of her civil rights complaint. The letter states that her retirement points had been corrected on May 30, 2001, to reflect 20 years of good service. The letter further states that "if you believe that the Coast Guard has not complied with the terms of the agreement, you may notify the Director of Civil Rights, Department of Transportation in writing within thirty (30) days of the date of the alleged violation, requesting that the terms of the informal agreement be spe-

cifically implemented. Alternatively, you may request that this matter be reinstated for further processing from the point the informal process ceased.” The Area Commander noted that the informal settlement was not in any way an admission of wrongdoing by anyone in the Coast Guard.

- The applicant’s response to the Area Commander dated November 20, 2001, in which she stated that the Coast Guard’s actions had satisfactorily resolved only part of her complaint of discrimination.
- A reprisal complaint filed by the applicant on December 27, 2001, in which she stated that she had been “kicked out of” XXXXX because of her prior civil rights complaint. She asked that her record be corrected to show that she completed 20 years of service one year earlier and explained her request as follows:

I was assigned to MSO Xxxxxx for two years while I was teaching in the Xxxxxxx. When I returned to California I requested a transfer to XXXXX. XXXXX told me that I was needed and that my transfer request was being processed. This paperwork processing took so long that I ended my year unsatisfactorily. This unsatisfactory year put my twenty year letter off by one year, it [threw] my good conduct record off (and medals and points associated with advancement off, too), and it [threw] my Armed Forces Reserve Medal off by one year. I should not have to live with the consequences of negligent paperwork management on the part of the Coast Guard. ... After being assigned to XXXXX, the unit failed to provide a program for correspondence courses ... [so] I could not advance.

- An email message from the applicant to an administrative officer dated September 19, 2004, in which she asked if she had been credited with two drills for the days she picked up her uniform and attended her physical examination in AY 2001.
- A letter from the Civil Rights Officer of the Department of Homeland Security dated February 24, 2005, regarding the applicant’s request for certain information under the Freedom of Information Act (FOIA). The letter notes that the Department has no report regarding her discrimination complaint because the “complaint came to resolution.”

Regarding her April 1998 ADT, the applicant stated that she “knew that ADT had to be done within the anniversary year that it was going to be applied to.” Therefore she requested drills and ADT when she submitted her second request for transfer on September 26, 1998. She stated that it was her responsibility to request ADT in a timely manner, and it was the Coast Guard’s responsibility “to accommodate [her] in a timely manner and to do it correctly. They did not do this either because they were not aware of new regulations and/or because they really believed ‘the needs of the service’ [came] first.”

The applicant alleged that her travel orders for the April 1998 ADT contradict the JAG's claim that her ADT could not be applied to AY 1998. She stated that she requested the ADT for AY 1998 and was told that it could be applied to AY 1998. She stated that otherwise she would have requested a waiver for the AT requirement for AY 1998. Moreover, the applicant alleged that she and her command thought that all 13 days of the ADT would apply to AY 1998. If not, they would have known she would be one day short and would have assigned her another drill day so that she would have a satisfactory year with 50 retirement points in AY 1998.

Regarding the timing and manner of her request for transfer, the applicant stated that the form she submitted to the Administrative Office in Xxxxxx was "the informal form that was used by MSO Xxxxxx to make various requests. If the form was incorrect, MSO Xxxxxx still needed to respond to me in a timely manner according to CG policy." She stated that at least they should have told her she was using the wrong form. She argued that the email from ISC Xxxxxx dated December 15, 1997, proves that MSO Xxxxxx failed to forward her transfer request.

APPLICABLE LAW

The Reserve Administration and Training Manual (RATMAN), COMDTINST M1001.27A, was in effect from May 14, 1991, to March 27, 1997. On March 28, 1997, the RATMAN was canceled, and the Reserve Policy Manual (RPM), COMDTINST M1001.28, went into effect.

Definitions from the RPM

Chapter 1.C.1.a. of the RPM stated that the Selected Reserve consists members of the Ready Reserve who are liable for immediate recall in case of war or national emergency and who perform paid IDT (drills). They are authorized to perform up to 48 drills per year and between 12 and 15 days of ADT per year.

Chapter 2.A.1. stated that IDT "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. Travel time to and from a regularly scheduled drill or training site criteria." Chapter 2.A.2. stated that "IDT may be performed with pay or without pay. Non-pay IDT drills are authorized for enhanced training of personnel." Chapter 2.A.3. defined a single drill as a 4-hour period of training. Chapter 2.A.4. defined a multiple drill as two 4-hour periods of training scheduled in a single calendar day.

Appendix A defined "appropriate duty" as a "special period of IDT (differing from single and multiple drills), under orders, of three to eight hours duration, nor-

mally performed on one calendar day. ... One period of appropriate duty is equivalent to a single IDT drill for pay and point purposes." Chapter 2.A.5 stated that appropriate duty "shall be used only where sufficient full-time support (FTS) personnel are not available to accomplish those duties."

Appendix A and Chapter 3.C.1. stated that Active Duty for Training (ADT) "is a tour of active duty that is used for training members of the reserve components to provide trained units and qualified persons to fill the needs of the Armed Forces during war or national emergency and such other times as national security requires."

Appendix A defined Annual Training (AT) as "[t]he specified period of active duty (normally 12 days) required annually of all members of the Selected Reserve. ... The training must be related to the reservist's rate, RPAL requirements, or unit mission. ISC commanders determine if periods of active duty satisfy the AT requirement." Chapter 3.B.2.a. stated that "[b]y Coast Guard policy, the AT requirement is limited to members of the SELRES and, for most members, 12 days per fiscal year." Chapter 3.C.4.a. states that "ADT-AT ... orders ... for any individual in a given position or for any given project will be approved by the servicing ISC(pf)."

Regulations Regarding Transfers and Assignments

Form CG-5525, "Coast Guard Reserve Assignment Request and Orders," was used by members of the SELRES to request a new unit assignment.

Appendix A of the RPM stated that the Reserve Personnel Allowance List (RPAL) is a "listing of Coast Guard billet requirements for selected reservists based on contingency needs, augmentation, and training opportunities. SELRES member accessions, assignments, and advancements are based upon the RPAL, which includes a Billet Code Number (BCN), a rating and grade, and any required qualification code for each billet."

Chapter 4.C.1. stated that when a reservist moves, "the servicing ISC(pf) should assign reservists to the unit closest to their permanent home address that has an appropriate vacant RPAL billet (see COMDTINST 5320.1). If no unit is available within a reasonable commuting distance, obligated reservists may be placed in TRA/PAY CAT E." Chapter 1.D.7.c.(3) stated that "[a]ll transfers to a drilling status will be based on RPAL vacancies or the needs of the Coast Guard." Chapter 2.B.5. stated that a "reasonable commuting distance" is no more than 100 miles.

Enclosure (3) to COMDTINST 5320.1 provided complex and time-consuming procedures for creating or changing an RPAL billet. Enclosure (4) to COMDTINST 5320.1 stated the following with respect to how an assignment officer (AO) should assign members of the SELRES to RPAL billets:

Assigning SELRES members is a complex process—not administratively, but in terms of the many issues the AO must consider when making an assignment. The AO must balance issues related to demand, supply, and the flow of people over time. The assignment problem could be stated as follows: 1. A vacant billet exists; which person should fill it? or 2. An unassigned person exists; which billet should he or she fill? ... The degree of fit of the assignment of SELRES members to RPAL billets is measured by a computed Quality of Match (QOM) ... Is the person's specialty the same as the billet's specialty? ... Is the person's grade the same as that of the billet? ... Does the person have the qualification code required by the billet? ... Does the person live within a reasonable commuting distance of the billet? ... These four values are then weighted according to a policy established by G-WTR, and a computed QOM determined. This measure of fit is only one variable, though, in a much broader problem.

Unit commanders want people who are perfect matches with requirements, who are available when needed, who require little or no further training investment to be fully productive, and who have been at the unit long enough to "know how things work around here." ... Individual SELRES members want to use their skills, to be compensated for using them, and rewarded for extraordinary effort and results. ... The AO must balance these needs in making assignment decisions, across multiple units and with many people, with the best interest of the Coast Guard in mind. ... The AO must be able to compare needs, wants, constraints, and conditions to come to a judgment about an assignment. Thus, there can be very few rules, since rules constrain our actions just as they guide them. Instead, the problem must be bounded by principles that can be compared with other principles, and results may be different in different places at different times. Solving the assignment problem means the AO must use his or her best professional judgment to balance a set of principles to accommodate a given situation ... Such principles are based on past successes and failures—or experience. Since the Coast Guard has little experience assigning SELRES members to RPAL billets, it is reasonable to say that the principles are evolving as we gain experience.

People assigned to units (but not to billets) are at risk of reassignment to the IRR (non pay) if the AOP is at target strength. Thus, a member is always encouraged to seek out and fill RPAL billets within his or her specialty.

Regulations Regarding Satisfactory Participation Requirements

Under both the RATMAN and RPM, most members of the SELRES were attached to a unit in a pay status, were authorized and scheduled for 48 IDT paid drills per year, and were required to perform at least 12 paid ADT days per anniversary year.

Chapter 4-A-1 of the RATMAN stated that unit commands should schedule four drills per month for each member of the SELRES but could alter drill schedules to coincide with "peak augmentation opportunities." Chapter 4-B-1.e. of the RATMAN stated the following:

For purposes of complying with the participation standards, credit for AT which begins in one anniversary year and extends to the next anniversary year may be given for either anniversary year, but not both. (See 12-C-9 for crediting retirement points.)

(1) In unusual cases, district commanders may credit AT which ends no earlier than 120 days in advance of, or begins no later than 120 days subsequent to, the anniversary date, to either year in order for a member to meet annual training requirements.

(2) The adjustment authorized above is to be used only on a non-recurring basis. When AT is performed in 1 anniversary year to meet the requirements of the previous anniversary year, a second period of AT must be performed within that same year.

Chapter 4-B-2 of the RATMAN stated that a district commander could waive an AT requirement in "emergencies," such as a "physical disability, documented by a physician" that prevents performance of AT. SELRES members who failed to meet the minimum satisfactory participation requirements could be discharged or transferred to the Individual Ready Reserve (no drilling or pay).

Chapter 2.B.3. of the RPM, entitled "Minimum Drill Attendance for Satisfactory Participation," stated that "[m]embers in TRA/PAY CAT A and B must attend 90% of scheduled, paid IDT drills each fiscal year. For members of TRA/PAY CAT A, members must normally attend at least 43 drills."

Chapter 4.A.1. of the RPM defined "satisfactory participation" as "the fulfillment of training requirements that meets or exceeds minimum acceptable standards as described in this chapter." Chapter 4.A.2. stated that unsatisfactory participation in the SELRES is "the failure to comply with any of the following contractual obligations or program participation requirements: ... c. Attending the minimum percentage of scheduled drills per 2.B. ... Satisfying the AT requirement when a waiver was not obtained. ..."

Chapter 3.B.4. stated that "[r]equests for waiver of the AT requirement shall be submitted in writing from the member to the commanding officer with a copy of the approved waiver request to the Servicing PERSRU and CGPC-adm-3. ... If the waiver is approved, non-completion of the AT requirement will not be considered when evaluating the member's performance." Chapter 3.B.3. stated that a commanding officer could grant a waiver for "sufficient cause" for

- a. Members who have completed a period of long term (greater than 139 days) active duty within the last year.
- b. Members who have graduated from Class "A" school within the last year.
- c. Members who are within one year of retirement eligibility.
- d. In years with limited ADT-AT funding (as designated by Commandant (G-WTR-3)), members whose rating skills are substantially maintained through their civilian employment.
- e. Members residing overseas where the cost of returning the members to a training site is prohibitive.
- f. Members experiencing temporary physical disability documented by a physician and temporary family or personal hardship. These reasons must be completely documented by the member.

Chapter 4.A.7. stated that “[t]ravel or change of residence does not relieve reservists of their obligation to meet participation requirements. a. Ready Reserve members detached from a unit due to change of residence (except for changes of residence outside the United States), shall normally be assigned to RPAL billets near their new residence, if available.”

Regulations Regarding Scheduling and Frequency of Duty

Chapter 5-B-2 of the RATMAN stated that, “[e]xcept as specifically authorized in writing by the Commandant,” SELRES members were authorized to perform no more than 2 drills per day, 6 per week, 12 per month, and 24 per quarter.” Chapter 5-B-2.b. of the RATMAN and Chapter 2.B.2.d. of the RPM stated that, except for the daily maximum of 2 drills, these limitations did not apply to drills without pay, but “the nature of duty to be performed [during drills without pay] must be equivalent to that authorized for paid drills.”

Chapter 2.B.2. of the RPM stated the following:

a. Except as specifically authorized in writing by Commandant (G-WT), excluding appropriate duty, the maximum number of paid periods authorized for an individual member of the Selected Reserve during one fiscal year is:

(1) Per fiscal year: 48

(2) Per day: 2

b. IDT drills are typically spread throughout the year (four drills per month), but they may be may be grouped to best use resources to meet surges in operations, seasonal requirements or for other reasons as determined by the unit issuing IDT orders. When drills are grouped, it is important that reservists be included in the scheduling process in order to avoid civilian job conflicts.

c. Care must also be taken to ensure that scheduling does not conflict with a member's attainment of a satisfactory year for both SELRES (fiscal year basis) and federal retirement (anniversary year basis) requirements. See section 4.A on Participation Standards in this manual.

d. The above limitations on paid drills do not apply to drills without pay (except for the daily maximum of one single drill or one multiple drill). However, the nature of duty to be performed must be equivalent to that authorized for paid drills.

e. In locations where the active unit work loads vary with the seasons, scheduled drills may be concentrated during peak season.

f. IDT and any form of active duty may not be performed on the same calendar day (e.g., drilling on Sunday and then reporting for ADT on the same Sunday evening).

(1) Two single drills may be performed and reported separately on the same calendar day to accommodate different program codes.

(2) Appropriate duty may not be performed on the same day as any other type of duty, with or without pay. Two periods of appropriate duty may not be performed on the same day.

Chapter 3.B.2.e. stated that “[w]hen scheduling duty, commands must keep in mind the member's need to earn 50 retirement points each anniversary year to earn a satisfactory year for federal service (i.e., to get a good year for retirement).”

Chapter 3.B.2.d. stated that “[t]he responsibility for requesting active duty to meet the AT requirement lies with the reservist. Scheduling should be coordinated between reservists and their command.”

Laws and Regulations Regarding Satisfactory Service for Retirement Purposes

Title 10 U.S.C. § 12732 stated that “for the purpose of determining whether a person is entitled to retired pay under section 12731 of this title, the person’s years of service are computed by adding ... [e]ach one-year period ... in which the person has been credited with at least 50 points on the following basis: (A) One point for each day of (i) active service ... (B) One point for each attendance at a drill or period of equivalent instruction that was prescribed for that year by the Secretary concerned and conformed to the requirements prescribed by law ... (c) Points at the rate of 15 a year for membership ...”

Appendix A of the RPM defined “satisfactory federal service” as a “any anniversary year during which a reservist earned a minimum of 50 retirement points. The accumulation of 20 such years is required for retirement with pay. (10 U.S.C. 12732)”

Chapter 8.C.3. stated that qualifying service toward retirement under 10 U.S.C. § 12732 is computed by adding each anniversary year in which at least 50 points have been credited on the basis of 1 point for each day of active duty or ADT; 1 point for each IDT drill attended or period of appropriate duty performed during the anniversary year; 15 points per year for membership in a Reserve component; and various points earned by satisfactory completion of correspondence courses.

Chapter 8.C.9. stated that 50 retirement points “must be earned in an anniversary year for a year to be satisfactory for computation of service for retirement. A maximum of 365 points (366 in a leap year) may be credited per anniversary year.” Chapter 8.C.9.f. stated that “retirement points must be credited in the anniversary year in which the duty was performed or the correspondence course was completed.” (Chapter 12-C-9.f. of the RATMAN also stated that “[r]etirement points must be credited in the anniversary year in which the duty was performed or the correspondence course was completed.”)

Chapter 8.C.10. stated that an annual Reserve Retirement Point Statement “is distributed by HRSIC approximately three months following the end of the reservist's anniversary year. ... Reservists who find discrepancies on their Reserve Retirement Point Statement shall send a request for correction with supporting documents via the

chain of command to HRSIC(cst). HRSIC shall review and resolve discrepancies if the problem can be identified. In cases that can not be resolved, HRSIC shall provide a meaningful endorsement with any additional supporting documents available and forward the request to CGPC-rpm for resolution.”

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. An application to the Board must be filed within three years of the day the applicant discovers the alleged error in her record that she wants corrected. 10 U.S.C. § 1552(b). The JAG argued that the application is untimely because the applicant is seeking correction of her record to show that she was credited for 50 retirement points for AY 1998. However, 33 C.F.R. § 52.13(b) states that “[n]o application shall be considered by the Board until the applicant has exhausted all effective administrative remedies afforded under existing law or regulations, and such legal remedies as the Board may determine are practical, appropriate, and available to the applicant.” Therefore, the applicant alleged, her application is timely because she has been diligently seeking correction of her total points for AY 1998 since 1999.

3. In accordance with Chapter 8.C.10. of the RPM, the applicant presumably received an Annual Statement of Retirement Points for AY 1998 in 1998. Although a copy of that statement is not in the record, other documents indicate that the applicant initially was credited with 37 retirement points; that in response to her complaints, she was for some time credited with 49 retirement points; and that after considering her BCMR application and reviewing her record, CGPC recently reduced her total retirement points for AY 1998 to 37. In light of CGPC’s recent reduction of the applicant’s total retirement points for AY 1998 from 49 to 37, the Board finds that the application is timely. Although the applicant knew or should have known that the Coast Guard was not counting her AY 1998 as a satisfactory year for retirement purposes since receiving her Annual Statement of Retirement Points in 1998, CGPC’s recent reduction of her total points for that year from 49 to 37, contrary to the applicant’s request, created a new alleged error regarding her total retirement points for AY 1998 and therefore causes the application to be timely.

4. The applicant alleged that the Coast Guard negligently and unfairly caused her to have an unsatisfactory year for retirement purposes by delaying her assignment to a new unit. Absent evidence to the contrary, the Board presumes that

Coast Guard officials, including the administrative personnel and assignment officers in Xxxxx and California, performed their duties lawfully, correctly, and in good faith.¹ The evidence submitted by the applicant indicates that on July 10, 1997, more than four months after the start of AY 1998, she informed the Coast Guard that she was moving to Xxxxxx, California, near Los Angeles, and asked for an assignment to a unit near Long Beach and San Pedro, south of Los Angeles in Southern California. She did so by submitting this information on the wrong form, which was supposed to be used for requesting ADT or other active duty orders rather than a new assignment, to the Administrative Office in Xxxxxx.

5. The applicant alleged that her request form was not lost but was never properly processed. As evidence, she submitted an email from the ISC in Xxxxxx concerning an agreement with ISC Alameda to transfer the applicant. ISC Xxxxxx stated, "Apparently, [the applicant] submitted a CG-5525 (CG Reserve Assignment Request and Orders) that never got to us." This email is very ambiguous as there is no evidence in the record that the applicant ever completed a proper assignment request form CG-5525, and she did not allege that she did so. As the applicant requested assignment to a unit in California in July 1997, her request would have been forwarded to the assignment officer at ISC Alameda. The applicant herself admitted that she later received a copy of the incorrect form she had submitted on July 10, 1997, from ISC Alameda. Therefore, the email does not prove that the incorrect form was not timely forwarded to the assignment officer at ISC Alameda or that the assignment officer did not timely attempt to find a billet for her in Southern California just as she had asked.

6. Chapter 4.C.1. of the RPM provides that when a member of the SELRES informs the Coast Guard that she has moved and needs a new assignment, as the applicant did in July 1997, the assignment officer at the new regional ISC should try to assign the member to the unit closest to the member's new permanent home address that has an appropriate vacant RPAL billet. Chapter 4.A.7.a. states that "Ready Reserve members detached from a unit due to change of residence ... shall normally be assigned to RPAL billets near their new residence, *if available*." [Emphasis added.] The applicant has not proved that after she submitted her first request for a new assignment, the assignment officer did not timely attempt to find her an RPAL billet in a unit in Southern California. As COMDTINST 5320.1 shows, RPAL billets are not always available when a SELRES member moves to a region, and assigning members to billets and units may be a time-consuming process. The COMDTINST notes that "[p]eople assigned to units (but not to billets) are at risk of reassignment to the IRR (non pay) if the AOP is at target strength. Thus, a member is always encouraged to seek out and fill RPAL billets within his or her specialty." Therefore, although quickly assigning the applicant to a

¹ 33 C.F.R. § 52.24(b); see *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

unit without a billet might have facilitated her earning of retirement points in AY 1998, the rules required the assignment officer to take the time to try to find her an RPAL billet within 100 miles of her home in Southern California because it would be in her best interest to have one. The fact that on September 26, 1997, two and one-half months later, the applicant voluntarily requested assignment to a unit about 470 miles away from her home, in Northern California, strongly suggests that the assignment officer's attempt to find her an assignment in Southern California had been fruitless due to a lack of appropriate vacancies.

7. The applicant has not proved that the form she submitted on July 10, 1997, was not timely provided to the proper assignment officer or that the assignment officer did not properly perform his duties in accordance with Chapters 4.A.1., 4.C.7., and 2.B.5. of the RPM and COMDTINST 5320.1. However, even assuming *arguendo* that the applicant's July 10, 1997, form was not timely processed, the Board is not persuaded that the consequent delay in the applicant's assignment constituted an error or injustice. The applicant submitted her request on an obviously incorrect form and, apparently, did not contact the assignment officer to ensure that it would be processed anyway. As a long-term member of the SELRES in the yeoman rating, the applicant knew or should have known that the recent integration of the Reserve into the regular Coast Guard and the introduction of RPAL billets had significantly complicated the assignment process for reservists and that her submission of the wrong form could delay processing of her request. Even if, as alleged, ISC Xxxxxx sometimes used the active duty request form for purposes other than its intended use, this fact would not convince the Board that the applicant could reasonably expect her use of the incorrect form not to delay her assignment in another region of the country. The applicant has not proved that she herself exercised due diligence in seeking a new assignment during the summer of 1997.

8. The applicant alleged that once she submitted her Reserve Information Worksheet requesting assignment to XXXXX on September 26, 1997, which that command immediately endorsed, the Coast Guard negligently and unjustly delayed issuing her Assignment Orders until December 14, 1997—11 weeks later—and unfairly provided a reporting date of January 24, 1998, even though she had informed the joint command that she was worried about whether she would earn enough retirement points to have a satisfactory year. The applicant did not point to any regulation that required the Coast Guard and XXXXX to act upon her request any faster than it did, and the Board knows of none. She has not shown that either the orders or the reporting date was unusually, unnecessarily, or unjustly delayed.

9. Given the timing and circumstances of the applicant's move and initial request for transfer, the Board finds that she has not proved any negligence or unnecessary, unjust delay on the part of the Coast Guard in assigning her to a new unit in California or setting her reporting date. Moreover, the Board notes that the applicant

could have earned points for ADT, drilling, or correspondence courses while she was still assigned to MSO Xxxxxx but failed to do so.

10. The applicant alleged that upon reporting to XXXXX on January 24, 1998, that command erroneously and unjustly prevented her from completing a satisfactory year of service for retirement purposes before her anniversary year ended on March 6, 1998. Chapter 3.B.2.e. of the RPM stated that “[w]hen scheduling duty, commands must keep in mind the member's need to earn 50 retirement points each anniversary year to earn a satisfactory year for federal service (i.e., to get a good year for retirement).” Chapter 2.B.2.c. stated that “[c]are must also be taken to ensure that scheduling does not conflict with a member's attainment of a satisfactory year for both SELRES (fiscal year basis) and federal retirement (anniversary year basis) requirements.” On January 24, 1998, only 42 days remained in the applicant's anniversary year. Since 15 points are earned by membership alone, it was theoretically possible for the applicant to earn the 35 remaining points to have a satisfactory year for retirement purposes in AY 1998. The language in Chapters 3.B.2.e. and 2.B.2.c., however, does not persuade the Board that XXXXX was required to assign the applicant enough drills during her first 42 days at the command to ensure that she could earn 35 points just because she had not earned any points during the first 46 weeks of her anniversary year. The applicant admitted that her supervisor told her he could not schedule her for extra drills because he did not have any extra work for her to do. Chapter 2.B.2.d. of the RPM stated that even for unpaid drills, “the nature of duty to be performed must be equivalent to that authorized for paid drills.” As Chapters 2.B.2.b. and 2.B.2.e. indicate, scheduling frequent drills during a specific period, rather than spreading them evenly throughout the year, was authorized when the workload required it—i.e., during surges in operations in “peak seasons.” Nothing in the RPM stated that a command must ensure that every reservist—even those who have earned no points during the first 46 weeks of the anniversary year—have sufficient drills scheduled to earn a satisfactory year for retirement purposes.

11. The applicant alleged that her command continued to follow the rules in the RATMAN and therefore did not know that the points she earned for ADT in April 1998 could not be applied to her AY 1998 for retirement purposes as well as for participation purposes. She argued that if they had known the new rules, they would have scheduled her for sufficient drills and ADT to earn 50 retirement points before March 6, 1998. However, the rules regarding retirement points did not change when the RPM was issued. Chapter 4-B-1.e. of the RATMAN, which allowed ADT performed within 120 days to be credited to the prior anniversary year, stated that “[f]or purposes of complying with the participation standards, credit for AT which begins in one anniversary year and extends to the next anniversary year may be given for either anniversary year, but not both. (See 12-C-9 for crediting retirement points.)” Chapter 12-C-9 of the RATMAN stated that “[r]etirement points must be credited in the anniversary year in which the duty was performed or the correspondence course was completed.” This

exact same sentence was included in Chapter 8.C.9.f. of the RPM. Therefore, under neither the RATMAN nor the RPM could the retirement points for the ADT that the applicant performed from April 19 to May 1, 1998, be credited to her prior anniversary year.

12. The applicant alleged that her retirement points for her ADT from April 10 to May 1, 1998, should be credited to her AY 1998 because of the language in her travel orders. The travel orders stated, "12 Days ADT-OTD to satisfy AT requirement for RQA AY ending 3/7/98." The Coast Guard's participation standards required each SELRES member to perform 12 days of AT each year or request and receive a waiver. The applicant apparently did not request a waiver from her command at XXXXX, and given the acceptable causes for waiver listed in Chapter 3.B.3., it seems unlikely that one would have been granted if she had. The travel orders are silent about how the retirement points for the ADT would be assigned and clearly do not suggest that any promise was made to assign them to the applicant's prior anniversary year contrary to regulation. It is clear from the Retirement Point Statement printed from the Coast Guard's database on November 9, 2005, that following the applicant's complaints, 12 retirement points that she earned for the ADT in April 1998 were erroneously attributed to AY 1998 for some period of time. However, this error in the database, which the Coast Guard has since corrected, does not convince the Board that, contrary to long-standing regulation, retirement points earned by the applicant in April 1998 should be attributed to the anniversary year that ended on March 6, 1998.

13. The applicant made numerous allegations with respect to the actions and attitudes of various Coast Guard personnel involved in her assignment and scheduling. Those allegations not specifically addressed above are considered to be not dispositive of the case.

14. The Board finds that the applicant has not proved by a preponderance of the evidence that her failure to receive 50 points and a satisfactory year toward retirement between March 7, 1997, and March 6, 1998, resulted from any negligence, error, or injustice on the part of the Coast Guard or XXXXX. The applicant earned no points while assigned to MSO Xxxxxx (aside from membership points) and did not exercise reasonable diligence to ensure that she would receive 50 points during the year despite her personal geographic and logistical impediments. The Retirement Point Statement printed from the Coast Guard's database on May 18, 2006, appears to be correct in showing that she received a total of 37 retirement points during AY 1998.

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

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

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

Elizabeth F. Buchanan

Randall J. Kaplan

Audrey Roh