

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2005-154

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 September 2, 2005.

This final decision, dated June 20, 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 chief warrant officer (CWO) in the Coast Guard Reserve, asked the Board to correct his record to show that from October 22 through November 4, 2003, he served on active duty for training (ADT) rather than inactive duty training (IDT). The applicant alleged that he was involuntarily recalled to active duty for nine months beginning on January 23, 2003. On October 11, 2003, he alleged, he signed an extended active duty (EAD) contract to begin active duty as of November 5, 2003. However, while on terminal leave in mid October 2003, he was "called back" to his unit to assist a deployment. The applicant stated that he served on a full-time basis between the end of his involuntary active duty orders on October 21, 2003, and the start of his EAD contract on November 5, 2003.

The applicant stated that on November 24, 2003, his unit "cut" ADT orders to bridge the gap and cover his service from October 22 through November 4, 2003. However, on December 2, 2003, the ADT orders were canceled, and his service during those two weeks was counted and paid as IDT instead.

The applicant stated that the Master Chief Petty Officer of the Coast Guard (MCPO E) informed him on August 31, 2004, that he did not qualify for educational benefits under the Montgomery G.I. Bill (MGIB) because he had a "break in service" from October 22 through November 4, 2003, and therefore had not performed 24 consecutive months of active duty.

In support of his allegations, the applicant submitted copies of the following:

- Standard Travel Orders dated November 24, 2003, which state that on October 22, 2003, the applicant was to report to his unit for "14 days of Consecutive Active Duty Training (ADT-AT)." The orders indicate that they were issued by the applicant's PERSRU in accordance with Article 4.G.3. of the Personnel Manual.
- His Leave and Earnings Statement (LES) for the month of October 2003, which shows that the applicant was paid as a member on active duty for all of October, based on transactions processed as of October 21, 2003. In addition, the LES states, "Your statement of intent has processed showing that you are scheduled to be retained on active duty beyond 22Oct03."
- His LES for the month of November 2003, which shows that he was paid as a member on active duty for all of November, based on "transactions processed as of November 20, 2003." The LES states, "Your expected active duty termination date is 22Jan04. Please convey your intentions to your unit/PERSRU to ensure timely separation processing or uninterrupted pay service." In addition, the LES shows that the applicant was on leave from October 1 through October 10.
- His LES for the month of December 2003, which shows that his basic pay and allowances were stopped as of October 21, 2003; that his basic pay and allowances for the period October 22 through November 4, 2003, had been deducted; and that he was instead paid for 13 consecutive multiple IDT drills from October 23 through November 4, 2003. It also shows, in clear contradiction to his receiving pay for a multiple drill on October 24, 2003, that he was charged for one day of regular leave on October 24, 2003.
- An email message showing that on November 24, 2003, a yeoman first class (YN1 P) serving as the Administrative Officer at the applicant's unit requested ADT orders for the applicant from October 22 through November 4, 2003. She wrote that the orders were needed "to cover the time between Title 10 RELAD [release from active duty] and member reporting for EAD orders. This has been discussed and verbally was approved by FOT and [a chief yeoman (YNC N) at the regional Integrated Support Command]."

- An email message from a yeoman third class (YN3 A) dated November 25, 2003, who stated that she had “entered [the applicant’s] ADT-AT and it is on my auditor’s desk for approval.”
- An email message dated December 1, 2003, from YN1 P to YNC N in which YN1 P stated the following:

I am trying to track some information regarding the conversation you had with [the applicant and LT M]. Member was under the impression there was an important reason that he should be on continuous active duty[,] so ADT-AT from the date of term[inal] leave on Title 10 orders to start date for EAD vs. member covering the period worked as IDT. He said he was told that if it was not continuous active duty it would affect several things, including pay, insurance, etc.

If it does not really affect anything, it would be best for the FOT budget and policies to pay the member by IDT drills instead. Could you please get back to me ASAP to clear up the confusion of WHY it needed to be accounted as ADT-AT vice IDT. The orders for ADT were just completed, but we still have time to cancel them and do the changes

- An email message from a lieutenant dated December 1, 2003, stating that “[p]er my conversation with [a lieutenant commander], we cannot authorize ADT-AT after the fact. [The applicant] should use IDT for the 22Oct03 to 04Nov03 time period. This will get him paid and allow those ADT-AT funds to go to those who are training for mobilization. ... [P]lease see to it that any orders for ADT-AT for [the applicant] are canceled immediately.”
- An email message from YNC N dated December 2, 2003, telling YN3 A to cancel the ADT orders and to make sure that the applicant’s authorization for IDT drills for the period in question was approved and that the applicant was paid.
- An email dated July 19, 2004, from YN1 P noting that the applicant had asked to participate in the MGIB when he signed his EAD contract on October 11, 2003; that she had submitted paperwork for a determination as to his eligibility to participate; and that she had not received an answer.
- An email from MCPO E dated August 31, 2004, noting that the applicant did not qualify for participation in the MGIB because he did not have any period of active duty at least two years in length. MCPO E noted that although the applicant was serving on Title 10 orders until October 21, 2003, and began EAD on November 5, 2003, “the service was not continuous and cannot be added to the current period to equal 2 or more years.”

VIEWS OF THE COAST GUARD

On January 11, 2006, the Judge Advocate General (JAG) of the Coast Guard recommended that the Board deny the applicant's request. 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 Article 3.B.1. of the Reserve Policy Manual (RPM) "directs that orders be issued in writing in advance of the member reporting for duty, except that verbal orders may be issued in time critical or emergency situations." CGPC pointed out that Article 3.B.6. of the RPM requires that all ADT-AT orders of 30 days or less be authorized by the regional Integrated Support Command, or "ISC(pf)." In addition, Article 3.A.3. stated that ADT-AT is to be scheduled "for the purpose of providing 'individual and/or unit readiness training.'"

CGPC stated that the ISC erroneously issued the applicant's ADT-AT orders after the fact without approval from the "order issuing authority," which is the Force Optimization and Training Division (FOT), as required by the Reserve Policy Manual. CGPC stated that orders were properly canceled because they were not issued or approved in advance by the FOT, which is ISC(pf). CGPC argued that "[s]ince this was not an emergency or time sensitive ADT, duty should not have commenced without proper written authority." CGPC stated that the emails show that the ISC denied that any advance verbal agreement had been made to bridge the gap between the applicant's release from active duty and the start of his EAD with ADT-AT orders. CGPC stated that the applicant's service was "properly documented and compensated for as IDT drill periods."

Regarding MGIB benefits, CGPC stated that the requested correction would not qualify the applicant for benefits because the Department of Veterans' Affairs (DVA) does not count ADT as active duty for this purpose. CGPC directed the Board's and the applicant's attention to a DVA website, www.gibill.va.gov, which states that a member may be eligible for MGIB benefits if the member has performed two years of continuous active duty, and that full-time service performed by a reservist under Title 10 "is considered active duty for purposes of qualifying for VA education benefits, unless the service is active duty for training [ADT]." In support of its allegations, CGPC submitted copies of the following:

- Standard Travel Orders showing that the applicant was called up under Title 10 to performed involuntary active duty for nine months beginning on January 23, 2003.
- An EAD contract signed on October 30, 2003, which obligated the applicant to serve about 20 months of active duty from November 5, 2003, through June 30, 2005.
- The first page of an EAD contract form that states that the applicant "shall remain on active duty for a term of service approximately 2 year(s) and 00 month(s) com-

mencing on the 11th day of October, 2003, and terminating on the 10th day of October 2004, [sic] both dates inclusive”

- An email from LT H of the ISC(pf), dated November 7, 2005, who stated that contrary to the applicant’s claims, his request for ADT orders had been disapproved by ISC(pf) and “yet somehow orders were cut sometime after that date.”
- An email from YNC P, dated November 7, 2005, who stated that while she was out of the office, the applicant and the unit’s Executive Officer signed an EAD contract and “attempted to bring him on before the approved date of 05NOV and it was rejected at HQ. ADT-AT request was rejected based on the conversation that ADT-AT was not to be used for the purpose of bridging Title 10 with EAD, but the money rather used for the purpose of training ... not deployment augmentation. The only thing I had done was to attempt to assist the member with the ADT orders he had requested, of which he had told me ‘HE’ [had] spoken with FOT and the PERSRU and had a verbal approval. My email was based on that conversation.”

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 13, 2006, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond in writing. No response was received.

APPLICABLE LAW

Chapter 2.A.1. of the Reserve Policy Manual (RPM), COMDTINST M1001.28A, defines “inactive duty” as “authorized training or other duty performed by reservists not on active duty. The primary purpose of inactive duty is to provide individual and/or unit readiness training. Inactive duty is a period of duty, under orders, scheduled for the performance of: a. Augmentation (on-the-job) or formal training in support of Coast Guard readiness (mission support may be a key element in developing training programs, but training shall be the paramount consideration). b. Readiness administration and maintenance (e.g., SWE participation, physical exams). c. Funeral honors.” Chapter 2.A.4. defines a “multiple drill” as two 4-hour periods of inactive duty training (IDT) scheduled in a single calendar day. Chapter 2.B.2.b. of the RPM stated that “IDT drills are typically spread throughout the year (four drills per month), but they 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.”

Chapter 3.A.1.a. defines “active duty” as “[f]ull-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned.” Chapter 3.A.2. states that for reservists, “active duty is comprised of the following categories: Active Duty for Training (ADT) and Active Duty Other than for Training (ADOT). Sub-categories of ADT include IADT, ADT-AT, or ADT-OTD. Sub-categories of ADOT include ADSW-AC, ADSW-RC, EAD, RPA, ADHC, or Involuntary Recall.”

Chapter 3.A.3. states that active duty for training (ADT) “is used to provide reservists with structured individual and/or unit training, or to provide formal courses of instruction through resident or exportable training. ADT in the form of on-the-job training may support Active component operational missions and requirements, thereby adding substance to the total Coast Guard Force; mission support may be a key element in developing training programs, but training shall be the paramount consideration. The sub-categories of ADT are:

“a. Initial Active Duty Training (IADT), which includes basic military training and technical skill training. ...

“b. Active Duty for Training – Annual Training (ADT-AT), which is the minimum period of active duty that reservists must perform each fiscal year to satisfy the training and participation requirements associated with their assignments. The primary purpose of ADT-AT is to provide individual and/or unit readiness training. For all members of the SELRES, ADT-AT shall be for not less than 12 days and not more than 15 days (exclusive of travel time) each fiscal year. Accomplishing Active component operational requirements or mission

support, as a consequence of conducting training, may be a key element in planning and conducting ADT-AT.

“c. Active Duty for Training – Other Training Duty (ADT-OTD), which is authorized training in addition to IADT or ADT-AT, to include on-the-job training, for individuals or units to enhance proficiency. ... Training conducted using ADT-OTD must have a clear end result such as certification, re-certification, qualification, completion of performance qualifications, or graduation from a formal course of instruction. ...”

Chapter 3.A.4. states that ADOT is “used to provide Reserve support to either Active component or Reserve component missions. ... The types of ADOT are:

“a. Active Duty Special Work (ADSW), for the Active Component (ADSW-AC) or for the Reserve Component (ADSW-RC), which is active duty for reservists, authorized from applicable military or reserve appropriations (AC funded or RC funded) to support AC or RC programs, respectively. The purpose of ADSW is to provide the necessary skilled manpower assets to temporarily support existing or emerging requirements.

“b. Extended Active Duty (EAD), which is active duty for reservists who serve in an Active component duty status. It is used to provide Reserve support to fill occasional personnel shortages in specific pay grades, ratings or specialties when active duty Coast Guard resources fall short of requirements.

“c. Reserve Program Administrator (RPA) duty... .

“d. Involuntary Active Duty, which is used in support of military operations when the President or the Congress determines that Reserve forces are required to augment the Active component. It is also used in support of response to domestic emergencies when the Secretary of Transportation determines that augmentation of Coast Guard Active forces is required. ...

“e. Active Duty for Health Care”

Chapter 3.B.1. states that “active duty orders shall be generated in writing, in advance of reservists reporting for duty. Normally, orders should be issued at least one month before the scheduled duty to allow reservists time to provide notification to civilian employers and family members. ... a. Requests for ADT-AT, ADT-OTD and ADSW orders must be submitted by the member following the instructions on form CG-3453. Supervisors in the chain of command or commanding officers shall forward active duty requests to their servicing ISC (pf) in order for written orders to be issued well in advance of duty dates. Verbal orders may be issued in time-critical or emergency situations, but orders in writing must follow as soon as possible.”

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. The application was timely.

2. The applicant asked the Board to correct his record to show that he performed ADT from October 22 through November 4, 2003, so that he would have two years of continuous active duty and be eligible for MGIB benefits. As CGPC pointed out, such a correction would not make the applicant eligible for MGIB benefits because the DVA does not count ADT as active duty that may qualify a member for educational benefits. This response, however, raises the question of whether the applicant is entitled to have the period October 22 through November 4, 2003, accounted for as some other type of active duty that would qualify him for MGIB benefits.

3. The record indicates that on October 11, 2003, someone at the applicant's unit prepared an EAD contract form that, if properly approved, would have cut short the applicant's Title 10 orders and placed him on EAD effective as of the same date. The email of YNC P indicates that the unit's Executive Officer may have done this. However, the record also indicates that the proposed contract was not approved and that on October 30, 2003, another EAD contract was prepared, signed, and approved to place the applicant on EAD as of November 5, 2003.

4. If the applicant had been verbally ordered by his commanding officer to report for active duty from October 22 through November 4, 2003, he might be entitled to have his record corrected to reflect that he was on active duty during that period. In *Skaradowski v. United States*, 200 Ct. Cl. 488 (1973), the plaintiff's commanding officer (CO) issued him a verbal order to continue serving on ADT for an extra five days after the termination date of his orders and to assume command during that period because the CO was going on leave. The plaintiff complied with the verbal order. The Army BCMR held that the applicant was not serving on active duty during those five days because no written orders had been issued. The Court of Claims held that these facts alone, which were stipulated by both parties, were sufficient to render the Army BCMR's decision arbitrary and capricious. *Id.* at 489. The court noted that "[o]ne can only conjecture as to what effect it would have had on plaintiff's career as an officer in the active reserve, had he disobeyed that [verbal] order. It is too crabbed a view to suggest that this period was not active duty, and that plaintiff's initial period of active duty had not been 'extended by proper authority' just because the order was oral (VOCO), and was not later confirmed by written order. The military services could hardly function without competent orders, delivered orally." *Id.* at 495.

5. The applicant, however, has not presented any evidence to show that he was ordered to perform active duty during the period in question. The evidence shows that he performed and was paid for full days of work from October 23 through November 4, 2003. In addition, his LESes for October and November 2003 show that no changes were made in the Coast Guard's pay database, and so he continued to be paid as if on active duty until December 2003, when corrections were made to reflect his service during the period as paid IDT. However, there is no evidence that the applicant performed this work pursuant to a written or verbal order by his command to remain on involuntary active duty or to begin extended active duty. Although the record indicates that the applicant wanted to be on continuous active duty and that the XO may have taken action to try to keep him on continuous active duty, these facts do not prove that from October 22 through November 4, 2003, the applicant was compelled by a lawful verbal or written order to serve on active duty.

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

ORDER

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

George J. Jordan

Adrian Sevier

Kenneth Walton