

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-220

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case on September 26, 2007, upon receipt of the applicant's completed application, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated June 12, 2008, is approved and 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 health services specialist who was medically retired from the Reserve on April 5, 1997, with a 30% disability rating for post-traumatic stress disorder (PTSD), asked the Board to correct her time in service, awards, and Reserve drill points for her inactive duty training (IDT (paid drills)), active duty training (ADT), special active duty training (SADT), unpaid drills, and appropriate duty. She alleged that a Computation of Retirement Point Credits (CRPC) prepared by the Coast Guard on July 11, 2007,¹ is incorrect in that it is missing

- (a) 12 days of ADT from the computation of her participation during her anniversary year extending from February 28, 1984, to February 27, 1985 (AY 1985);
- (b) 12 days of ADT and an unstated amount of IDT from AY 1987;
- (c) 11 days of ADT from AY 1996; and
- (d) an unstated amount of IDT, ADT, and appropriate duty from AY 1997.

The 2007 CRPC shows that the applicant performed exactly 4 years of active duty from February 28, 1977, to February 27, 1981, when she was released into the Reserve. Therefore, she needed 16 satisfactory years of Reserve service (earning a minimum of 50 total points each year)

¹ The applicant's CRPC was originally prepared in 1997. The 2007 CRPC was prepared in response to the applicant's first BCMR application, Docket. No. 2007-126, which was administratively closed after the PSC issued the new CRPC based upon the documentation of points included with her first application. The applicant objected to the administrative closure of the case, alleging new errors in the CRPC and submitting new evidence. In response to the Chair's advice, she submitted this second application.

to earn a Reserve retirement.² The 2007 CRPC shows that as a reservist from February 28, 1981, until her retirement on April 5, 1997, the applicant received the following points, computing to 15 years of satisfactory service for retirement purposes, before she was medically retired:

AY	Corresp. Courses ^a	Drill Duty (IDT)	Membership ^b	Subtotal	Adjusted Total ^c	Funeral Duty	ADT ^d	Total Points
1982		46	15	61	60		13	73
1983		46	15	61	60		13	73
1984		49	15	64	60		101	161
1985		48	15	63	60			60
1986		49	15	64	60		43	103
1987		8	15	23	23			23
1988		50	15	65	60			60
1989		94	15	109	60		12	72
1990		53	15	68	60		14	74
1991		40	15	55	55			55
1992		46	15	61	60		11	71
1993		50	15	65	60		13	73
1994		50	15	65	60		12	72
1995		48	15	63	60			60
1996		50	15	65	60		56	116
1997		36	15	51	51		15	66
1998 ^e			2	2	2			2

^a Reservists may earn participation points by taking correspondence courses.

^b Reservists automatically receive 15 points per anniversary year by virtue of membership alone, regardless of their actual participation.

^c Reservists could not receive more than 60 points for correspondence courses, IDT drills, and membership during an anniversary year. Therefore, subtotals above 60 were adjusted to 60.

^d Reservists must perform at least 12 days of ADT each anniversary year to remain in an active status. Extra days of ADT performed during one anniversary may be attributed to the prior or subsequent year to fulfill the annual training requirement, but the points earned for ADT may only be attributed to the anniversary year in which the ADT was actually performed.

^e Because the applicant was medically retired on April 5, 1997, her AY 1998 was a partial anniversary year, running from February 28 through April 4, 1997, and her membership points were pro-rated.

Because the 2007 CRPC shows that the applicant served 4 years on active duty and performed 15 years of satisfactory service as a reservist, the Coast Guard credits her with just 19 years of satisfactory service toward a Reserve retirement. In support of her allegations of error in these computations, the applicant submitted the following documents:

² Reservists are required to earn at least 50 participation points in each “anniversary year” of their service for that year to count as a satisfactory year for retirement purposes. 10 U.S.C. § 12732. Under 10 U.S.C. § 1414, which was enacted in 2001, veterans with at least 20 satisfactory years of service and disability ratings from the DVA of at least 50% may receive concurrent retired and disability pay (CRDP). Prior to the enactment of § 1414, veterans could not receive full retirement pay and disability pay simultaneously.

- Endorsed orders show that the applicant performed 12 days of ADT from May 16 to 27, 1983, with the notation “A/Y: 2/28/84.”³
- Endorsed orders show that she performed 12 days of ADT from July 22 to August 2, 1985, with the notation “A/Y: 2/28/86.”⁴
- A Leave and Earning Statement (LES) for pay period February 1986⁵ shows that she had thus far been paid for 21 drills during fiscal year (FY) 1986.
- Signed certifications show that she performed 24 multiple IDT drills⁶ from March 1 through December 7, 1986.
- A Leave and Earnings Statement for pay period June 1995 shows that she was paid for 12 days of ADT from June 19 to 30, 1995.
- A Leave and Earnings Statement for pay period September 1996 shows that she was paid for 15 days of ADT from September 16 to 30, 1996, and that she had been paid for 46 IDT drills performed throughout FY 1996.
- A Leave and Earnings Statement for pay period November 1996 shows that she was paid for 10 days of “appropriate duty”⁷ from October 1 to 10, 1996. Travel orders show that the applicant had been transported to a Naval Hospital on October 1, 1996, and that “O” days of appropriate duty were to satisfy her ADT requirement for AY 1997.

The applicant alleged that because of her PTSD,⁸ she did not discover the errors in her record until September 2006 because she found reviewing her Coast Guard records to be too distressing. Therefore, she asked the Board to waive the three-year statute of limitations.

VIEWS OF THE COAST GUARD

On February 27, 2008, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion and recommended that the Board deny any relief beyond that which has already been provided by the Coast Guard Personnel Command (CGPC). The JAG adopted the findings and analysis of the case provided in a memorandum by CGPC.

³ A Retirement Points Statement in the applicant’s record for AY 1984 shows that she was credited with 13 days of ADT in May 1983; 30 days in June 1983; 31 days in July 1983; 20 days in August 1983, and 7 days in September 1983, which together total the 101 days shown on her CRPC.

⁴ A Retirement Points Statement in the applicant’s record for AY 1986 shows that she was credited with 10 days of ADT in July 1985, 7 days in August 1985, and 26 days in September 1985, which together total the 43 days shown on her CRPC.

⁵ The applicant’s Retirement Points Statement for AY 1986 shows that she earned 8 IDT points in November 1985, 5 in December 1985, 4 in January 1986, and 4 in February 1986.

⁶ Under Chapter 2-C-4.a.(1) of the Reserve Administration and Training Manual (RATMAN) in effect in 1987, a “multiple drill” lasted at least 8 hours and earned the reservist 2 drill points. A “single drill” lasted at least 3 hours and earned 1 drill point.

⁷ Under Chapter 2-C-4.a.(2) of the RATMAN, a day of “appropriate duty” earned the reservist 1 drill point.

⁸ The applicant’s medical board reported that “the evaluatee was well until 22 SEP 96 when she was seen at the Naval Base in Turkey for sudden onset of tearfulness and inability to communicate and requested psychological treatment. She was called to active duty in September 1996. Prior to deployment to Turkey for combat, she was berthed in the same barracks in RTC Yorktown where she was raped multiple times in 1978. She experienced nightmares of the rape and became hypervigilant. When she arrived in Turkey and the combat exercises began, the explosives, live rounds, and maneuvers caused her to have increased traumatic flashbacks.” Another medical record states that she never reported the rapes until 1996 “but described symptoms of post-traumatic stress disorder since that time.”

CGPC noted that, with respect to the applicant's retirement points in the 1980s, "the Coast Guard is limited to a review of the contents of her paper record and any supporting documentation presented by the applicant as historical data for Reserve points computation was not maintained in electronic databases." CGPC stated that after reviewing the evidence submitted with the application, the Personnel Services Center (PSC) has prepared a corrected CRPC and sent a copy to the applicant. PSC's review "concluded that the applicant has substantiated 48 vice 8 IDT drill points during the anniversary year of February 28, 1986, through February 27, 1987." Therefore, the applicant is now credited with 20 satisfactory years of service toward a Reserve retirement. CGPC stated that other points claimed by the applicant are already reflected in her CRPC and that points can only be credited to the anniversary years in which the duty was performed. CGPC stated that the applicant's retirement point statements are presumptively correct and that the "Coast Guard has no way of ascertaining that the periods of duty the applicant claims were not included in the computations recorded on [the July 11, 2007, CRPC]." The revised CRPC issued on February 12, 2008, shows the corrections shaded below:

AY	Corresp. Courses	Drill Duty (IDT)	Membership	Subtotal	Adjusted Total	Funeral Duty	ADT	Total Points
1982		46	15	61	60		13	73
1983		46	15	61	60		13	73
1984		49	15	64	60		101	161
1985		48	15	63	60			60
1986		49	15	64	60		43	103
1987		48	15	63	60			60
1988		50	15	65	60			60
1989		94	15	109	60		12	72
1990		53	15	68	60		14	74
1991		40	15	55	55			55
1992		46	15	61	60		11	71
1993		50	15	65	60		13	73
1994		50	15	65	60		12	72
1995		48	15	63	60			60
1996		50	15	65	60		56	116
1997		46	15	51	51		15	76
1998			2	2	2			2

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 29, 2008, the Chair sent the applicant a copy of the JAG's advisory opinion and invited her to respond within 30 days. No response was received.

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 10 U.S.C. § 1552.
2. An application to the Board must be filed within three years after the applicant discovers the alleged error in her record. 10 U.S.C. § 1552. The applicant knew or should have known that she had not been credited with at least 50 retirement points in AY 1987 in 1987. Therefore, her application was untimely.
3. Pursuant to 10 U.S.C. § 1552(b), the Board may excuse the untimeliness of an application if it is in the interest of justice to do so. In *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that to determine whether the interest of justice supports a waiver of the statute of limitations, the Board “should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review.” The court further instructed that “the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review.”⁹
4. Regarding her delay in seeking correction of her record, the applicant alleged that she was unable to review her Coast Guard records prior to 2006 because of her PTSD. The report of her medical board indicated that she was well from 1987 until 1996, when she first reported her symptoms, but another medical record indicates that she had suffered symptoms of PTSD since 1978. The Board notes that the applicant ably served as a chief health services specialist for many years after 1987 and prior to her diagnosis in 1996 and is not persuaded that her PTSD prevented her from seeking correction of her retirement points during that time.
5. Regarding the merits of the case, the Board notes that the Coast Guard has already found and fixed significant errors in the 2007 CRPC. Given the errors thus far discovered, the Board finds that it is in the interest of justice to waive the statute of limitations and to review the remainder of the alleged errors to determine if the applicant has proved that she is entitled to more retirement points.
6. By issuing the newest CRPC on February 12, 2008, the Coast Guard has corrected the applicant's point totals for AY 1987 and AY 1997. The correction of her IDT points for AY 1987 from 8 to 48 was presumably based upon her submission of signed certifications showing that she performed 24 multiple IDT drills, which would earn her 48 total IDT points, from March 1 through December 7, 1986. She has not shown that the 8 IDT points with which she was already credited on her prior CRPC were not included among the 48 documented on the certifications. The correction of her IDT points for AY 1997 from 36 to 46 was presumably based upon her LES for pay period September 1996 showing that she had been paid for 46 IDT drills performed throughout FY 1996 (although her anniversary year clearly did not correspond to the

⁹ *Allen v. Card*, 799 F. Supp. 158, 164-5 (D.D.C. 1992). See also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

fiscal year so the significance of the LES is unclear) and on her travel orders showing that her 10 days of appropriate duty in October 1996 may not have been properly credited.

7. The applicant submitted endorsed orders showing that she performed 12 days of ADT from May 16 to 27, 1983, with the notation "A/Y: 2/28/84." However, the applicant's Reserve Retirement Point Statement for AY 1984 already credits her with 13 days of ADT in May 1983, and these 13 days are included in the total of 101 days of ADT shown on the CRPC. The applicant has not proved that the 12 days of ADT reflected on the endorsed orders she submitted are not already included in the 101 days shown for AY 1984 on her CRPC.

8. The applicant submitted endorsed orders showing that she performed 12 days of ADT from July 22 to August 2, 1985, with the notation "A/Y: 2/28/86." However, the applicant's Reserve Retirement Point Statement for AY 1986 already credits her with 10 days of ADT in July 1985 and 7 days of ADT in August 1985, and these 17 days are included in the total of 43 days of ADT shown on the CRPC. The applicant has not proved that the 12 days of ADT reflected on the endorsed orders she submitted are not already included in the 43 days shown for AY 1986 on her CRPC.

9. The applicant submitted an LES for February 1986, which shows that she had thus far been paid for 21 drills during FY 1986. These 21 paid drills are reflected on her Retirement Point Statement for AY 1986 and are presumably included in the 49 IDT points shown on her CRPC for AY 1986. The applicant has not proved that the 21 IDT drills reflected on her LES for February 1986 are in addition to the 21 drills she is credited for having performed from October 1985 through February 1986 on her Retirement Point Statement for AY 1986.

10. The applicant submitted an LES for June 1995, which shows that she was paid for 12 days of ADT from June 19 to 30, 1995, which was during her AY 1996. There is no Retirement Point Statement for AY 1996 in her record, but the CRPC shows that she was credited with a total of 56 days of ADT. The applicant has not proved that the 12 days of ADT she performed in June 1995 are not properly included in the 56 days of ADT shown on the CRPC.

11. The Coast Guard has already corrected the applicant's CRPC to show that she completed 20 years of satisfactory service for retirement purposes, and she has not proved that she is entitled to any more retirement points or time in service beyond what is shown on the CRPC in her record dated February 12, 2008. The points she earned for ADT and appropriate duty are correctly attributed to the anniversary years in which that duty was actually performed.

12. In addition to challenging her time and points, the applicant asked for correction of her "awards." She did not specify what type of "awards" she wants, and if she believes that she has been denied some type of monetary award or medal, she should specify exactly what award she means and document her entitlement to the award in another application.

13. Accordingly, the Board finds that the Coast Guard has already corrected all errors proven in the application, and no further relief should be granted with respect to the applicant's time and points.

ORDER

The application of xx, USCGR (retired), for correction of her military record is denied.

Evan R. Franke

Robert S. Johnson

Adrian Sevier