

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2010-227

**XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX**

FINAL DECISION

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 application upon receipt of the applicant's completed application on July 30, 2010, and subsequently prepared the final decision as required by 33 CFR § 52.61(c).

This final decision, dated May 19, 2011, 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 ALLEGATION

The applicant asked the Board to correct his record to show that the 12 years of non-qualifying service he accumulated in the Individual Ready Reserve (IRR)¹ was actually accumulated while he was on the Active status List (ASL)/Inactive Status List (ISL) of the Standby Reserve. The applicant contended that in 1989 he was transferred from the Selected Reserve (SELRES) to the IRR due to a reduction in force (RIF). He argued that he should have been transferred to the ASL/ISL of the Standby Reserve in accordance with the guidance provided in Articles 1.C.3.a.(1) and (5)² and 1.C.3.b.(2)³ of the Reserve Policy Manual and that

¹ Article 1.C.2 defines the Ready Reserve as those members who are liable for immediate recall to active duty. The Ready Reserve includes the Selected Reserve (SELRES) and the IRR. Subparagraph 1.C.2 b. states that the IRR consists of individuals who must fulfill their military service obligation (MSO) and those who have fulfilled their MSO and who voluntarily remain in the IRR. Subparagraph 1.C.2.b.(1) states that members of the IRR may voluntarily participate in reserve training for retirement points only, without pay, and are assigned to the same Coast Guard or selected Joint Service units as their SELRES counterparts. Members of the IRR may also apply to perform active duty for special work or readiness management periods for pay.

² Article 1.C.3.a. states that the ASL of the Standby Reserve contains reservists who may be ordered to active duty in time of war or national emergency if it is determined that not enough qualified Ready Reservists are available in the categories required. Members on the ASL may participate in reserve training without pay, may earn retirement points, and are eligible for promotion. Paragraph 1.C.3.a.(1) states that the ASL includes members who have been transferred from the Ready Reserve because of temporary hardship, disability, or other cogent reasons, and who intend to return to the Ready Reserve, and 1.C.3.a.(5) states that it includes members whose retention on the ASL,

the Coast Guard should have rectified the alleged error when he reenlisted during the 12-year IRR period. He argued that a transfer to the ASL/ISL of the Standby Reserve would have prevented inequities in his record, such as having no retirement points for the 12-year period and accumulating 30 years of total service without having the necessary 20 years of satisfactory service for retirement with pay at age 60. Total service is calculated from the pay entry base date, which for the applicant is July 31, 1978. The applicant stated that he currently has 30 years of service and is in danger of not achieving sufficient qualifying years to retire. He stated that the correction would allow him to pursue re-entry into the SELRES and the opportunity to earn the necessary years of qualifying service to receive retired pay at age 60.

VIEWS OF THE COAST GUARD

On November 17, 2010, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in accordance with a memorandum from the Commander, Personnel Service Center (PSC).

PSC stated that as of September 21, 2010, the applicant's Reserve Retirement Point statement shows that over the course of his entire Reserve career he has earned 17 years of qualifying service for retirement (a minimum of 50 points for each year) and 15 years of non-qualifying service for retirement. PSC stated that there is no reason that the applicant could not have earned qualifying years of service credible toward retirement during the 15 years he was in the IRR. PSC also stated that there is no record that he ever requested to be transferred from the IRR. PSC further stated that even if relief were granted to the applicant, it would not change his pay entry base date, which is used to calculate total service. Nor would granting relief change the fact that the applicant has 15 years of non-qualifying service toward retirement. In this regard, PSC stated that for enlisted members, service in either the Ready Reserve or Standby Reserve counts toward accumulating 30 years of service.

PSC stated that the applicant is currently serving under active duty orders that were due scheduled to terminate on January 31, 2011. When his orders terminate, the applicant will return to the IRR. Also, at that time, he will have over 30 years of total reserve service calculated from his pay base date July 31, 1978. PSC recommended that the applicant seek a "30-year waiver" through July 30, 2013, which would allow him to remain in the Ready Reserve and to earn 3 additional years of qualifying service for retirement. In this regard, Article 5.B.8a. of the Reserve Policy Manual states that normally on the 30th anniversary of their pay base dates, enlisted members shall be transferred to the ISL Standby Reserve unless they have requested transfer to the IRR, requested retirement, or have been granted waivers by PSC to remain in the SELRES. Subsection 5.B.8b. states that members transferred to the IRR may be assigned to units in

for reason other than those specified in other subparagraphs is considered to be in the best interest of the Service. These personnel may be retained on the ASL for no more than 2 years.

³ Article 1.C.3.B. states that the ISL contains reservists who may be ordered to active duty in time of war or national emergency if it is determined that not enough qualified reservists in an active status are available in the categories required. Members on the ISL may not train for pay or retirement points, are not eligible for promotion, and do not accrue credit for qualifying years of service for retirement. Paragraph 1.C.3.B.(2) states that included on the ISL are members who were on or were eligible to be placed on the ASL, standby Reserve, but who were instead placed on the ISL in order to prevent an inequity with regard to their pay, promotion, or retirement points.

accordance with policy and may continue to participate in training and earn retirement points through IDT, ADT, and correspondence courses in a non-pay status.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 19, 2010, the Board sent a copy of the views of the Coast Guard to the applicant for a response. The Board did not receive a reply from the applicant.

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 submission and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of the United States Code. The application was timely.

2. The applicant stated that as a result of a RIF, the Coast Guard transferred him from the SELRES to the IRR in 1989, where he remained for 12 years. He did not earn the necessary 50 points for a qualifying year of satisfactory service for retirement for any year during the 12 year-period. Although he alleged that the Coast Guard should have transferred him to the ASL/ISL of the Standby Reserve to protect his record from inequities with regard to his pay, promotion, or retirement points, he presented no evidence that the Coast Guard was required to transfer him to the Standby Reserve. Nor has he presented any evidence that he requested to be transferred from the IRR to the Standby Reserve. According to Article 1.C.2. of the Reserve Policy Manual, participation in the IRR is voluntary for those members like the applicant who have completed their initial military obligation. The applicant has not presented any evidence that he was dissatisfied with being in the IRR until his recently.

3. The Board agrees with the Coast Guard that the applicant had sufficient opportunity to earn retirement points while in the IRR. The IRR is a legitimate Reserve category, where members may earn retirement points by drilling (without pay), completing correspondence courses, and performing specific types of active duty for pay. While the applicant alleged that he checked about opportunities for active duty, he does not give any indication that he sought to earn retirement points by drilling for points (non-pay) or that he attempted to complete any correspondence courses for retirement points during the IRR period.

4. The problem presented is that the applicant reached his 30th year of total service on July 31, 2008 and is no longer eligible to serve in the SELRES without a waiver from PSC-rpm. The applicant is concerned about his ability to earn 20 years of qualifying service for retirement. PSC stated that placement in the Standby Reserve would not change the applicant's pay entry date, which is used to calculate a member's total service. Therefore, as recommended in the advisory opinion, the applicant should request a waiver of the 30-year requirement if he wishes to return to the SELRES. If he cannot remain in the SELRES, he should request to remain in the IRR where he can earn retirement points in a non-pay status. The Coast Guard indicated that the applicant would return to the IRR upon the completion of his active duty orders.

5. To summarize, the applicant has failed to show by a preponderance of the evidence that the Coast Guard committed an error or injustice against him by transferring him to the IRR in 1989. Even though he was in the IRR, he had sufficient opportunity to earn retirement points during the 12 or more years that he was in the IRR. He should apply for a "30-year waiver" as recommended by PSC to remain in the SELRES to earn the remaining satisfactory years of service for a 20-year retirement, or at a minimum, he should request to remain in the IRR where he can earn retirement points in a non-pay status.

6. Accordingly, the applicant's request to show that he was transferred to the Standby Reserve in 1989 instead of the IRR should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

Christopher M. Dunne

Frank E. Howard

Jennifer A. Mehaffey