

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2002-129

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

ANDREWS, Deputy Chair:

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The BCMR docketed the applicant's request for correction on June 28, 2002.

This final decision, dated May 22, 2003, 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 asked the Board to correct his Reserve record to show that he earned at least 50 points from September 2, 1979, to September 1, 1980, and another 50 points from September 2, 1980, until his discharge on April 18, 1981, so that each period would count as a satisfactory year of federal service for retirement purposes. He alleged that he performed the drills but that they were not recorded because his "supervisors did not supervise properly and we were in disharmony."

The applicant alleged that he discovered the error on May 8, 2002, and argued that the Board should find it in the interest of justice to waive the three-year statute of limitations in his case because of his dedicated participation in the military since 1965.

SUMMARY OF THE RECORD

On September 2, 1969, the applicant enlisted in the Air Force Reserve. On April 8, 1974, he was discharged, and on April 9, 1974, he enlisted in the Coast Guard

Reserve. Because he had no break in his service, his anniversary year for retirement purposes ran from September 2 to September 1.

On September 20, 1975, the applicant was informed that because he had been absent from Reserve duty twelve times during the past anniversary year and if his "unsatisfactory participation" continued, he would be transferred to the Individual Ready Reserve (IRR). He was advised that he could make up for his absences to have a satisfactory year for retirement purposes if he performed seven drills within sixty days.

On November 5, 1979, the applicant's supervisor sent him a letter pointing out times when he had either refused to perform certain work or had failed to show up for drills. In light of his "lack of participation" and "direct refusal to obey orders," she recommended that he consider transferring to the IRR.

On December 23, 1979, the applicant wrote a letter to a chief warrant officer at his command stating that the office lacked unity. He stated that the problem was not that they disliked each other but that they did not trust each other to do their jobs and could not resolve their differences. He stated that he had "had problems participating since last year. Mostly because of work. This was generally accepted but not communicated. Trouble came up because of this. And it was a problem because I didn't call every month as a normal or average work-a-day person would have. There have been other times of bad communications when active duty arrived or a request to work at different times than normal. Also, our requests of one another sometimes failed to be stated clearly." He went on to criticize the attitudes of some of his colleagues.

On February 24, 1980, the applicant's commanding officer (CO) recommended to the Personnel Command that he be transferred from the Selected Reserve to the IRR because of ten unexcused absences. The CO stated that his attendance had been "erratic" and that "[m]uch command and staff time has been required in counseling [the applicant], rearranging duties and schedules to meet his requirements and respond to his individual needs. Attached correspondence from [the applicant] to various personnel of this command should provide insight into [his] personal problems. At present, [his] overall participation creates more burdens than benefits to this unit."

On February 26, 1980, the applicant was informed that he would be transferred to the IRR as of March 1st. On March 1, 1980, he was transferred to the IRR. On July 21, 1980, he sent his command a letter responding to his annual points statement (form CG-4175) and his placement on the IRR. He asked for opportunities to take correspondence courses and perform active duty. He asked to be assigned to a new office due to distinct differences between himself and his previous supervisors.

On April 18, 1981, upon the expiration of his enlistment, he was discharged from the IRR. The applicant's participation record in the Coast Guard Reserve appears as follows on the CG-4175s in his record:

| YEAR | DRILL AND ACTIVE DUTY TRAINING POINTS BY MONTH (Anniversary years beginning on September 2) | | | | | | | | | | | TOTAL PARTIC. PTS. | TOTAL MBRSH. PTS. | TOTAL | |
|----------------|--|----|---|---|----|----|----|---|----|---|----|--------------------------|-------------------------|-------|-----|
| | S | O | N | D | J | F | M | A | M | J | J | | | | A |
| 4/9/74-9/2/74 | | | | | | | | 2 | | | | | 2 | 6 | 8 |
| 9/2/74-9/2/75 | 6 | 4 | 5 | 2 | 4 | 10 | 4 | 4 | 17 | | | | 69 | 15 | 84 |
| 9/2/75-9/2/76 | | 4 | 8 | 6 | 10 | 4 | 4 | 4 | 4 | 4 | 17 | | 65 | 15 | 80 |
| 9/2/76-9/2/77 | 8 | 17 | 5 | 4 | 4 | 4 | 4 | 4 | 15 | 6 | 4 | | 75 | 15 | 90 |
| 9/2/77-9/2/78 | 2 | 4 | 4 | 4 | 4 | 4 | | | 8 | | 6 | 2 | 38 | 15 | 67* |
| 9/2/78-9/2/79 | | 4 | 4 | 4 | 2 | | 20 | | | | 4 | 4 | 42 | 15 | 69* |
| 9/2/79-9/2/80 | | 4 | 4 | 2 | 4 | | | | | | | | 14 | 15 | 29 |
| 9/2/80-4/18/81 | | | | | | | | | | | | | | 9 | 9 |

* Total includes points for passing correspondence courses.

On September 18, 1985, the applicant reenlisted in the Air Force Reserve, where he continues to serve. A Points Brief of his entire career shows that between September 1969 and September 2001, he performed 26 satisfactory years of federal service for purposes of retirement (21 in the Air Force Reserve and 5 in the Coast Guard Reserve) and about 1.6 unsatisfactory years in the Coast Guard Reserve, and that he spent about 4.4 years as a civilian.

IEWS OF THE COAST GUARD

On November 26, 2002, the Chief Counsel of the Coast Guard recommended that the Board deny the applicant's request for untimeliness or, in the alternative, for failure of proof.

The Chief Counsel stated that the applicant's argument as to why the Board should waive the statute of limitations is insufficient to overcome the important purposes underlying such statutes, including efficient use of government resources and the deterioration of evidence over time.

The Chief Counsel stated that "Reservists are provided retirement points statements to verify annually. This statement includes procedures for correcting annual point totals." He pointed out that the Reserve Administration and Training Manual in effect in 1980 and 1981, provided that Reservists who found discrepancies on their CG-4175s could send request a correction via the chain of command. The Chief Counsel stated that as a six-year veteran of the Coast Guard Reserve, the applicant "knew or should have known of these procedures, and the importance of documenting retirement points. Applicant's failure to challenge the record at the time the alleged error occurred suggests that he believed it to be correct." He stated that the applicant had failed to produce "a single piece of corroborating evidence" that he had performed drills that were not recorded. In addition, the Chief Counsel pointed out that, since the applicant

has already performed more than 20 satisfactory years toward retirement, he would gain no additional retirement benefits if the Board granted the requested relief.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 2, 2002, the BCMR sent the applicant a copy of the views of the Coast Guard invited him to respond. No response was received.

APPLICABLE REGULATIONS

Chapter 3-C-1 of the Reserve Administration and Training Manual (COMDT-INST M1001.26) provided that a member of the Selected Reserve who, in the opinion of his commanding officer, failed to participate satisfactorily should be counseled. If no improvement was observed, the Reservist could be transferred to the IRR.

Chapter 9-D-4.a. of the manual provided that a "reservist who finds discrepancies on CG-4175 [an annual or terminal Statement of Retirement Points] should initiate a request, with verifying documents, to Commandant (G-RA-1) via the district commander (r)."

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 his record. 10 U.S.C. § 1552(b). Although the applicant alleged that he discovered the error on May 8, 2002, the Board finds that he knew or should have known that he had not earned satisfactory points toward retirement from September 2, 1979, to September 1, 1980, and from September 2, 1980, to April 18, 1981, no later than the day of his discharge, April 18, 1981. Therefore, his application was untimely.

3. The Board may waive the three-year statute of limitations if it is in the interest of justice to do so. 10 U.S.C. § 1552(b). To determine whether it is in the interest of justice to waive the statute of limitations, the Board should consider the reasons for the delay and conduct a cursory review of the merits of the case. *Dickson v. Secretary of Defense*, 68 F.3d 1396, 1405 (D.C. Cir. 1995); *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992). The applicant stated that the Board should consider his case because of his long-

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