

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2011-079

XXXXXXXXXXXXXXXXXX.

PS1 (former)

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 January 20, 2011, and subsequently prepared the final decision as required by 33 CFR § 52.61(c).

This final decision, dated September 29, 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, ALLEGATION, AND EVIDENCE

The applicant asked the Board to correct his record to show that he retired from the Coast Guard Reserve under the Reserve Transition Benefits (RTB)¹ program with 15 years, 8 months, and 8 days of creditable service instead of being discharged in 1992.

The applicant was a member of the Selected Reserve (SELRES),² but he was transferred from that assignment to the Individual Ready Reserve (IRR)³ on October 28, 1991. He was

¹ According to COMDTINST 1001.37 (Procedures for Submitting and Processing Requests for Reserve Transition Benefits (RTB) issued on December 21, 1993, RTB was a part of the National Defense Authorization Act for Fiscal Year (FY) 1993 that applied to DOD Reservists. The FY 94 DOD Authorization Act extended RTB to members and former members of the Coast Guard Reserve who were involuntarily transferred, separated, discharged, or retired from the SELRES [Selected Reserve] due to downsizing. The eligibility period for RTB was from 1 October 1991 to 30 September 1999. COMDTINST 1001.37 stated that Coast Guard Regulations implementing the RTB program were issued in ALDIST 345/93 on December 20, 1993.

² Enclosure (1-1) to the Reserve Policy Manual (1991) defines the SELRES as that portion of the Ready Reserve consisting of units and, as designated by the Secretary concerned, of individual reservists with the highest priority for mobilization who participate in inactive duty training periods and annual training in a pay status. It also defines the Ready Reserve as consisting of the Selected Reserve and Individual Ready Reserve who are liable for active duty as outlined in 10 U.S.C. §§ 672 and 673(a).

³ Enclosure (1-1) to the Reserve Policy Manual (1991) defines the IRR as members of the Ready Reserve not assigned to the Selected Reserve and not on active duty. It consists of members assigned to the active status pool and those assigned to various other units in non-pay drilling statuses.

discharged from the Coast Guard Reserve by reason of expiration of enlistment on September 21, 1992. He alleged that he was eligible for the RTB program, but somehow he “fell through the cracks.”

According to an October 8, 1991 Computation of Retirement Points Credit statement, the applicant had 15 years, 8 months, and 8 days of creditable service, at the time of his transfer to the IRR, although he had served in various branches of the Reserve for more than 20 years.

The applicant stated that he discovered the alleged error or injustice on January 2, 1992. He stated that the Board should find it in the interest of justice to consider his application if it has been more than 3 years since he discovered the error, because he was told several times that he was not eligible for the RTB program because he did not have 20 years of creditable service.

The applicant submitted the following documents in support of his application:

1. Documents showing that he served in the Pennsylvania National Guard from March 26, 1955 to January 3, 1956 and that he earned 123 points for this period of service.
2. DD 214 showing that he served on active duty in the Navy from January 4, 1956, to December 3, 1959, for a total of 3 years and 11 months on active duty. After completion of required active duty, he was released from active duty into the Naval Reserve.
3. Record of Naval Service showing that as a member of the Naval Reserve from December 4, 1959, until March 25, 1963, he earned only the 15 gratuitous points that are awarded each year. [A minimum of 50 points per year is required for a satisfactory year of service that counts toward retirement.]
4. Army enlistment contract showing that he enlisted in the Army Reserve for 1 year on July 2, 1974, which was extended for two years on June 30, 1975. He was discharged from the Army Reserve in July 1976. [From July 7, 1976, to July 6, 1979, the applicant served in the Coast Guard Reserve.]
5. Documents showing that he served in the Air Force Reserve from September 25, 1979 until October 8, 1981. [According to the Coast Guard, this period of service is not reflected on the applicant's Computation of Retirement Point Credits statement.]
6. A Coast Guard manually-prepared Computation of Retirement Point Credits statement showing that over his military career, the applicant had 15 years, 8 months, and 8 days of creditable service toward retirement. It also showed that he had 9 years in which he did not earn the required 50 points per year to have a satisfactory year of service. [Years in which a member fails to earn 50 points are not satisfactory years for retirement purposes.]
7. A January 2, 1992 letter from the Commander, Second Coast Guard District to the Commandant requesting a correction to the applicant's Retirement Points Credit statement. The letter indicates that the Commander believed that the applicant had not been credited with his Army National Guard and Navy service. The letter asked that the applicant be given a “20 year letter” if he had that amount of service.
8. Although not submitted by the applicant, his military record contains a March 2, 1992, response from the Commandant to the Commander's letter. The Commandant stated that the applicant's time in the Army National Guard and the Navy was already included in the computation and that his total qualifying service was as indicated on his last point statement.

OTHER RELATED DOCUMENTS FROM APPLICANT'S MILITARY RECORD

The applicant's military record contains an August 24, 1991 administrative remarks page (page 7) counseling the applicant about his lack of attendance at the unit. The applicant was in a SELRES assignment. The counseling entry states the following:

Counseled telephonically concerning members lack of attendance at this unit.

[The applicant] states that he was promoted in the Pittsburgh Police Department which has been more demanding on his time and interferes with his [Coast Guard] attendance.

[The applicant] states that he is now settled into his new job and will attend two weeks ADT at MSO Pittsburgh in Sept 1991. In addition, he will start attending IADT drills on a regular basis.

He is aware that further failure to attend drills will result in his being placed in the IRR.

Member not scheduled this weekend and thus unavailable to sign the page 7. A copy is being mailed to his home address.

The military record shows that the applicant was receiving yearly retirement point statements. The one for the year from October 9, 1990 to October 8, 1991, shows that he completed 4 of 4 drills per month for January and August, 2 of 4 drills per month for April, May, and December, 1 of 4 drills for September, and 0 of 4 drills for per month for February, March, June, and July. The year was considered an unsatisfactory one.

VIEWS OF THE COAST GUARD

The Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in accordance with a memorandum from the Commander, Personnel Service Center (PSC). PSC noted the applicant had prior service in the National Guard, Navy, Army Reserve, and Air Force Reserve, but also noted that the applicant's service in the Air Force Reserve was not included on his October 8, 1991, Computation of Retirement Points statement.

PSC offered the following chronology of the applicant's Coast Guard Reserve Service.

- The applicant enlisted initially in the Coast Guard Reserve on July 7, 1976 and was discharged on July 6, 1979.
- After serving in the Air Force Reserve, the applicant reenlisted in the Coast Guard Reserve for 3 years on October 9, 1981, and subsequently reenlisted for 8 years on September 22, 1984.

- The applicant was assigned to Coast Guard Reserve Unit Pittsburgh [in the SELRES] from September 1984 to October 1991.
- The applicant was transferred to the Individual Ready Reserve on October 28, 1991. On November 24, 1991, the applicant acknowledged receipt of the IRR transfer orders.
- On January 2, 1992, the Commander, Second Coast Guard District requested a corrected retirement points statement for the applicant citing missing service credit for the time the applicant served in the Army National Guard and the Navy.
- On February 4, 1992, Commander, Second Coast Guard District mailed a letter to the applicant notifying him of his upcoming expiration of enlistment on September 21, 1992. The Commander asked the applicant to select whether he wanted to reenlist or extend his enlistment or whether he did not desire to reenlist. Paragraph 4. of that letter advised the applicant that he would be discharged if a reply was not received by the date of his expiration of enlistment or obligation. The last sentence of this paragraph reads “I urge you to protect the retirement that you have already earned by staying with the Reserve program.”
- On March 2, 1992, the Commandant (C-RSM-3) found that the applicant had already been credited with service in the Army National Guard and the Navy. Therefore no correction was made to his retirement points statement.

Under the heading “Discussion and Conclusions of the PSC memorandum,” PSC stated that the application was not timely as the applicant listed the date of discovery of the alleged error as January 2, 1992.

In addition, PSC stated that the applicant was not eligible for separation pay under the RTB program because he had 15 years or more of service when he was transferred to the IRR in October 1991. PSC noted the following with respect to the RTB program:

The [RTB] program provided benefits to members and former members of the Coast Guard Reserve who were involuntarily transferred, separated, discharged or retired from the Selected Reserve (SELRES) due to downsizing during the period from [October 1, 1991 to September 30, 1999]. The RTB program provided temporary authority to place SELRES members whose pay billets had been disestablished into RET-2 status (awaiting retired pay at age 60) if they had at least 15 but less than 20 years of service. In addition, the RTB program provided separation pay for SELRES members having at least six but less than 15 years of service who were involuntarily removed from a pay status due to billet reductions. The eligibility for the RTB program covered from [October 1, 1991 to September 30, 1999] and the details were outlined in COMDTINST 1001.37, procedures for submitting and processing request for reserve transition dated December 21, 1993.

PSC also stated that the applicant would have been eligible for early qualification for retired pay at age 60 (RET-2 status) if his transfer to the IRR was involuntary and a result of Coast Guard downsizing of the Coast Guard Reserve Workforce. In this regard, PSC stated that there is no evidence to support whether the applicant's transfer to the IRR was related to downsizing, but the orders transferring the applicant to the IRR imply they were involuntary. PSC stated the following:

As outlined in Reserve Transition Benefits (RTB) policy, eligible members who received a notification letter had one year from the date of the notification letter to indicate their intentions to elect RTB. Former members were required to apply directly to Commandant (G-RSM) but no time frame for application is specified in RTB policy.

Applicant was discharged from the Coast Guard Reserve in September 1992 prior to promulgation of the Reserve Benefits Transition Benefits policy in 1993. There is no evidence to support that applicant either received a notification of potential eligibility for RTB letter from the Coast Guard or that applicant applied directly to Commandant (G-RSM) for RTB as a former member.

PSC stated that the applicant indicates he "was told several times" that he was not eligible for the RTB program but provides no documentation to support previous applications for RTB. PSC also stated that authority for the RTB program ended in 1999. Members who did not make claims when the authority was still in effect are now limited by the Barring Act (31 U.S.C. § 3702), which limits claims against the government to six years.

PSC argued that the Coast Guard is presumptively correct, and the applicant has failed to substantiate any error or injustice with regard to his record.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

The applicant responded to the views of the Coast Guard and did not agree with the recommendation. He provided the following with respect to the untimeliness of his application:

- In 1992 and 1997 when he turned 60 years old, he applied for a retirement letter because he had 23 years of service. He was told that he did not qualify for retirement because he did not have 20 years of creditable service. He was not told about the RTB program at that time. He stated that he dropped the matter because he had no proof of his retirement points and that the majority of his mail was placed in the trash by an ex-wife.
- In 2007, he attended a free legal clinic for veterans and spoke with an attorney who told him to get his record from the archives. He received a copy of his record and reapplied for retirement in February 2009.
- When he did not hear anything about his retirement request by August 2010, he went to the local Coast Guard base and no one there was aware of his situation. He was referred to the Pay and Finance Center in Topeka, Kansas. The RTB program was explained to

him and he was referred to the BCMR. This was the first time that he had heard of the RTB program. He would have taken it if he had known about it because that was money in his pocket.

With respect to the voluntariness of his transfer into the IRR the applicant stated the following:

- He did not volunteer to go into the IRR. His commanding officer (CO) had just taken over the unit and wanted perfect attendance on weekends. As a police officer with the Pittsburgh Police Department it was hard to get weekends off. In a discussion with his CO, he explained to the CO that he could not drill on weekends or during the week because he had just been promoted to detective and his days off were Tuesdays and Wednesdays, his hours were from noon to 8 p.m., and that he had court 5 days per week.
- He told the CO that he was entitled to 2 weeks of military leave from his job and that he was entitled to 5 weeks of vacation time. He asked the CO if he would help him use his 5 weeks of vacation to make up his drills.
- He received a letter transferring him to the IRR shortly his conversation with the CO about his attendance.
- He explained that his work schedule had not changed and that it would do no good to reenlist, when the IRR wanted him to do so. He stated that as far as he was concerned he had 23 years of service and should have been retired. He stated that he did not realize that each time he switched services he lost a year of creditable service for retirement. He contends that he has 2 years of Air Force service that has not been credited to him, as well as 2 years with the Army Reserve, although he is not sure that the 2 years of Army Reserve service were good years.

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.

2. The application is timely. The Board is persuaded that the applicant discovered the existence of RTB in 2007. He complied with the Board's statute of limitations by filing an application with the Board in 2010.

3. COMDTINST 1001.37 (Procedures for Submitting and Processing Requests for Reserve Transition Benefits) issued on December 21, 1992 stated that the RTB program was designed to ensure that SELRES members who were *involuntarily* separated, discharged, transferred, or retired during the *period of force drawdown* were treated fairly and equitably by providing certain benefits and compensation. As noted in Article 6 of COMDTINST 1001.37,

ALDIST 345/93 implemented regulations for the RTB program. According to Article 1 of ALDIST 345/93, RTB benefits applied to members of the Coast Guard Reserve who were involuntarily transferred from the Selected Reserve. Article 2 of the regulation defined involuntary separation as the discharge of a member from the Coast Guard Reserve or transfer of such member from the SELRES during the period beginning October 1, 1991, and ending September 30, 1999, unless one or more of the following conditions applies: "A. The member was discharged or transferred from the [SELRES] . . . (2) "[a]s the result of the member's unsatisfactory participation or unsatisfactory performance in the SELRES . . ."

4. There is no evidence in the record that the applicant's transfer to the IRR resulted from downsizing. However, there is evidence in the record that the applicant was transferred to the IRR because of unsatisfactory drill participation. At the time of the applicant's transfer from the SELRES to the IRR in October 1991, his immediate past year of participation in the SELRES was unsatisfactory. For a satisfactory year of participation in the SELRES, the applicant was required to complete a minimum of 75% of 48 scheduled drills. See Article 4-A-1. of the Reserve Policy Manual (1991). This provision stated that the CO will schedule 4 drills each month and that members like the applicant who had completed their initial military obligation were required to satisfactorily participate in 75% of such scheduled drills each anniversary year. According to the applicant's Retirement Points Statement for the year October 9, 1990 to October 8, 1991, the applicant completed only 16 of 48 scheduled drills. Earlier, in August 1991, a page 7 counseling entry was placed in the applicant's record noting that he was counseled about his lack of drill participation and informing him that any further failure to attend drills would result in his transfer to the IRR. After being counseled, the applicant completed only 1 of the 4 drills for September 1991. Therefore, on October 31, 1991, the Commander, Second Coast Guard District informed the applicant by letter that he had been assigned to the IRR.

5. Although the letter to the applicant informing him of his assignment to the IRR did not state the specific reason for the transfer, the preponderance of the evidence establishes that it occurred because of the applicant's unsatisfactory drill attendance. In this regard, the Board notes the applicant's unsatisfactory drill participation for the year immediately preceding his transfer to the IRR, the page 7 advising him that he would be transferred to the IRR if he continued to miss drills, the fact that he completed only 1 of 4 drills in September 1991, and the fact that he was transferred to the IRR the following month. Since the applicant was transferred from his SELRES assignment because of unsatisfactory participation, his transfer is not considered involuntary under Article 2 of ALDIST 345/93. As stated above, Article 2 of ALDIST 345/93 stated that a transfer from the SELRES to the IRR was not involuntary if it was due to a member's unsatisfactory participation or unsatisfactory performance. Therefore, the applicant was not eligible for early qualification for retirement under the RTB regulation.

6. Nor was the applicant eligible for separation pay under Article 7 of ALDIST 345/93 because his transfer from the SELRES was not involuntary. Under the regulation, a member who was involuntarily transferred from the SELRES and who had completed at least 6 years but less than 15 years of service under 10 USC § 12732 on the date of the member's involuntarily separation shall be eligible for separation pay. As stated earlier, the applicant was not eligible for separation pay under the RTB program because his transfer from the SELRES was due to

unsatisfactory participation and therefore was not considered involuntary. In addition, he had more than 15 years of satisfactory service at the time of his transfer to the IRR.

7. The applicant was discharged (completely severed) from the Coast Guard Reserve in 1992. The discharge occurred while he was a member of the IRR and not the SELRES. Therefore, his discharge from the Coast Guard is not covered under the RTB regulation. Even if his discharge from the IRR were covered under RTB regulation, the applicant would still not be eligible for benefits because he was notified of his impending expiration of enlistment and provided with an opportunity to reenlist or extend his enlistment. As he stated in his response to the advisory opinion, he opted not to reenlist because of his civilian job requirements at the time. Article 2.F. of ALDIST 345/93 states that a discharge is not involuntary if “the member was discharged on expiration of the member’s term of enlistment, unless the member was fully qualified for reenlistment, requested reenlistment, but was not authorized to reenlist.” The applicant’s reenlistment was authorized but he chose not to reenlist. (However, if the applicant had reenlisted or extended and remained in the IRR, he could have earned retirement points through correspondence courses, etc. By earning points other than for pay, the applicant could have obtained 20 years of satisfactory service for retirement if he had remained in the IRR.)

8. Although the applicant states that he has over 23 years of total service and should have received a 20-year retirement, the regulation requires that a member have 20 years of satisfactory service to qualify for retired pay at age 60. Enclosure (1-1) to the Reserve Policy Manual (1991) defines a year of satisfactory federal service as 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, except under the RTB program. The applicant’s military record does not support a finding that he had 20 years of satisfactory federal service, and he has not presented other evidence establishing that he earned 50 points during 20 of the 23 years in which he served in the Reserve. Even if the two years that he served in the Air Force Reserve are credited as satisfactory (and the applicant presented no evidence that they were), that would bring his total years of satisfactory service to approximately 17, years, 8 months and 8 days of creditable service, which is still not enough for a 20-year retirement.

9. Article 4 of ALDIST 345/93 required that “[a]ll members of the Coast Guard Selected Reserve involuntarily separated after October 1, 1991 are to be informed of the rights and benefits [of the RTB program].” However, because the applicant’s transfer from the SELRES to the IRR and his discharge from the Coast Guard were not involuntary under Article 2 of the regulation, there was no requirement for the Coast Guard to inform him of the RTB program.

10. Since PSC noted that the applicant’s Computation of Retirement Points Credit Statement does not include his Air Force Reserve Service, the Board will direct the Coast Guard to prepare a new Computation of Retirement Points Credit Statement for the applicant that includes all of his active and reserve service.

11. Therefore, the application should be denied because the applicant has failed to prove by a preponderance of the evidence that the Coast Guard committed an error or injustice by not retiring him or authorizing separation pay for him under the RTB regulation. Nor did the

applicant prove that he had 20 years of satisfactory service to be eligible for retired pay at age 60.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former PS1 XXXXXXXX, xxx xx xxxx, USCGR, for correction of his military record is denied. However, the Coast Guard shall issue to him a new Computation of Retirement Points Credit statement that includes all of his active and reserve service, including his service in the Air Force Reserve.

James E. McLeod

Vicki J. Ray

Julia Doig Wilcox