

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-065

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the applicant's completed application on January 14, 2017, and assigned it to staff member [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 22, 2017, 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 former an [REDACTED] who served on active duty for four years from May 1970 to May 1974, before entering the Coast Guard Reserve, asked the Board to correct his record to show that he was awarded a Reserve Good Conduct Medal (RGCM). He alleged that he is eligible to receive a RGCM because he served satisfactorily in the Selected Reserve for four continuous anniversary years¹ by accruing sufficient points each year from 1974 through 1978,² performing the required number of inactive duty (IDT) drills, and serving on continuous active duty from May to September 1975; May to September 1976; and September to October 1977.

¹ Reservists' participation in the Reserve is measured by each "anniversary year" (AY), which starts on the date they first enter any branch of the military (as long as they have no break in their military service). To have "satisfactory participation" in the Selected Reserve requires performance of a certain percentage of scheduled monthly drills and two weeks of active duty for training per year. COAST GUARD RESERVE ADMINISTRATIVE AND TRAINING MANUAL (RATMAN), Enclosure 1-1 and Chaps. 4-A-1 and 4-B-1.

² Members of the Selected Reserve are paid for performing regular drills, and they earn one retirement point for each day of active duty and one for each four-hour period of inactive duty training (a drill). They may perform no more than two drills per day and are expected to drill at least one full weekend per month (for four points) and perform at least two weeks of active duty for training (ADT) per anniversary year. Reservists also receive fifteen points each year based on membership alone, and they may earn points by completing correspondence courses. To qualify for a Reserve retirement and receive retired pay upon attaining age 60, a member must accumulate at least twenty anniversary years in which they are credited with at least fifty points. RATMAN, Chaps. 1-B-2.a., 4-A-1.a.(3), 12-C-1.d., 12-C-3.a.

Regarding the delay in submitting his application to the Board, the applicant stated that he discovered the alleged error on December 7, 2016. He argued that the Board should find it in the interest of justice to consider his application because he believes that he meets all of the requirements for the RGCM.

SUMMARY OF THE RECORD

On May 18, 1970, the applicant enlisted in the Coast Guard for four years and incurred a six-year statutory military service obligation. He served on active duty for exactly four years and earned a regular Good Conduct Medal. He was released into the Reserve on May 17, 1974, to complete his military service obligation. As a reservist, he drilled for pay and retirement points in the Selected Reserve. Initially, his training status was categorized as “RJ” because he was in the Selected Reserve and had not yet completed his statutory military service obligation, but when his six-year obligation ended on May 17, 1976, he was categorized as “RQ” because he no longer had a statutory obligation.³ In 1976, the applicant extended his contract for one year, through May 17, 1977. When that contract ended, he reenlisted in the Reserve for another eight years.

The applicant’s Retirement Points Statements for his Reserve anniversary years AY 1975, AY 1976, and AY 1977, ending on May 17 of each year, show that he performed ADT and drilled regularly, attending at least 44 of the 48 scheduled drills. However, his Retirement Points Statement for AY 1978, which ended on May 17, 1978, shows that he did not perform any drills in January, March, April, or May and earned only 24 drill points during that anniversary year. He did, however, serve on ADT for 26 days in September 1977 and 31 days in October 1977, earning 57 total points for ADT. Including the 15 points that he received for membership alone, the applicant was credited with 96 points in AY 1978, which made that year a qualifying year at least for retirement purposes.⁴ The applicant’s points for drills and ADT, as shown on his Retirement Points Statement for AY 1978, appear in the table below:

Type of Duty	Points Earned by Month from 5/18/77 – 5/17/78 (AY 1978)												Total IDT Pts.	Mbr-ship Pts.	Total ADT Pts.	Total Points for AY
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec				
IDT Drills	00	04	00	00	00	04	04	04	00	00	04	04	24	15	57	96
ADT	00	00	00	00	00	00	00	00	26	31	00	00				

The applicant’s evaluation marks from May 31, 1974, to June 13, 1977, show that he received consistently good marks for proficiency in rating and leadership of at least 3.0 (on a scale from zero to 4.0) and never received a mark below a perfect 4.0 in conduct. The applicant did not complete any drills or ADT from 1979 to 1985, when he was honorably discharged from the Reserve.

³ RATMAN, Chaps. 1-E-2, 1-E-3. RJ personnel must attend 90% of the scheduled monthly drills to be credited with “satisfactory participation,” while RQ personnel must attend only 75% of scheduled drills to be credited with “satisfactory participation,” unless the District Commander sets a higher percentage. RATMAN, Chap. 4-A-1.

⁴ RATMAN, Chap.12-C-1.d.

APPLICABLE LAW AND REGULATIONS

Chapter 9.A. of the Medals and Awards Manual, COMDTINST M1650.25B, states that the RGCM “provides reservists an incentive to exceed the minimum standards of participation.” From February 1963 through December 1979, to receive a RGCM, a reservist had to complete four consecutive years of service with no court-martial, no non-judicial punishment, no misconduct, and no civil conviction for an offense involving moral turpitude, as well as minimum average marks of at least 3.0 for proficiency, leadership, and conduct. Creditable service must have been accrued while serving in the Coast Guard Reserve and the member must have completed at least 12 days of annual training (ADT) in each of the four consecutive years and performed 90% of 48 scheduled IDT drills (90% = 43). The 90% of drills is calculated “exclusive of drills scheduled while the reservist was performing active duty or active duty for training.”

VIEWS OF THE COAST GUARD

On June 19, 2017, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in accordance with a memorandum submitted by the Commander, Personnel Service Center (PSC). PSC argued that the application is untimely because the applicant was discharged more than 40 years ago and did not provide any justification for the untimeliness of his application for relief.

Regarding the merits, PSC argued that relief should be denied because the applicant does not meet the eligibility requirements for the RGCM as set forth in the Coast Guard Medals and Awards Manual. PSC stated that per the manual, the applicant is required to have completed at least 43 IDT drills each consecutive year over four years to qualify for the RGCM but that his retirement points statements and the legacy data from PSC show that he did not meet the requirements because he performed only 24 drills in the fourth consecutive year.

In support of his position, PSC submitted copies of the Retirement Points Statements that were issued to the applicant for AY 1974 through AY 1978, which show the following:

<u>Dates of Service</u>	<u>IDT</u>	<u>Membership</u>	<u>ADT</u>	<u>Total Points (Adjusted Total)</u>
5/18/1974 - 5/17/1975	44	15	13	72
5/18/1975 - 5/17/1976	52	15	82	142
5/18/1976 - 5/17/1977	48	15	110	170
5/18/1977 - 5/17/1978	24	15	57	96

PSC also submitted a Computation of Retirement Point Credits printed on May 18, 2017, from “legacy data,” which shows the following points summary:

<u>Dates of Service</u>	<u>IDT</u>	<u>Membership</u>	<u>ADT</u>
5/18/1974 - 5/17/1975	28	15	13
5/18/1975 - 5/17/1976	28	15	166
5/18/1976 - 5/17/1977	48	15	110
5/18/1977 - 5/17/1978	24	15	56

PSC noted that although the Retirement Points Statements differ slightly from the PSC legacy data, both records show that the applicant did not meet the eligibility requirements to receive a RGCM due to his IDT drill count for AY 1978.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 29, 2017, the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. The Board did not receive a response.

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 10 U.S.C. § 1552.
2. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.⁵ The applicant was discharged from the Reserve on June 13, 1985, but did not submit his application to the Board until 2016. He received a regular Good Conduct Medal upon his release from four years of active duty in 1974 and did not receive one after four years of service in the Reserve in 1978. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in 1978, and his application is untimely.
3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.⁶ In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the Board should not deny an application for untimeliness without “analyz[ing] both the reasons for the delay and the potential merits of the claim based on a cursory review”⁷ to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted 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.”⁸
4. The applicant did not provide any justification for his delay in seeking the RGCM, and the Board's cursory review of the merits of his request indicates that it cannot prevail because he did not perform enough weekend drills in his AY 1978 to meet the full four-year eligibility requirements for the RGCM. Chapter 9.A.2. of the applicable Coast Guard Medals and Awards Manual states that from February 1963 through December 1979, to receive a RGCM, a reservist had to perform 90% of scheduled IDT drills in each of four consecutive years. The record shows that the applicant served four consecutive years in the Reserve from May 18, 1974, to May 17, 1978, but the Reserve Retirement Points Statements in his record show that he earned only 24 IDT drill points in AY 1978. Although he earned more than 43 IDT

⁵ 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

⁶ 10 U.S.C. § 1552(b).

⁷ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁸ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

points in the each of the first three anniversary years, he is not eligible for the RGCM medal because he earned only 24 IDT points in his fourth anniversary year.⁹

5. The applicant's AY 1978 Retirement Points Statement, which was issued to him in 1978, is presumptively correct,¹⁰ and he has submitted insufficient evidence to rebut it. Based on the record before it, the Board finds that the applicant's claim cannot prevail on the merits. Accordingly, the Board will not excuse the application's untimeliness or waive the statute of limitations. The applicant's request should be denied.

⁹ The Board notes that although PSC argued that the applicant was required to earn at least 43 points (90% of 48 drills) in each of the four consecutive years to attain eligibility for the RGCM, Chapter 9.A.2. of the Medals and Awards Manual states that the 90% of scheduled IDT drills is exclusive of any month in which the member was on active duty during the scheduled drills. The applicant's record shows that he was on active duty for 26 days in September 1977 and for 31 days in October 1977, during his AY 1978. Therefore, the 4 scheduled drills in each of those two months (8 drills total) should not be included in the calculation of the 90%. However, attending at least 90% of the remaining 40 scheduled drills, would have required the applicant to attend 36 drills, rather than the 43 asserted by PSC. Nevertheless, because the applicant attended only 24 drills in AY 1978, the difference in the calculation does not make him eligible for the RGCM.

¹⁰ 33 C.F.R. § 52.24(b); see *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (citing *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979), for the required presumption, absent evidence to the contrary, that Government officials have carried out their duties "correctly, lawfully, and in good faith.").

ORDER

The application of former [REDACTED] USCGR, for correction of his military record is denied.

September 22, 2017

