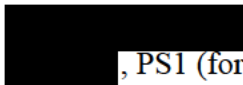



**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-059

, PS1 (former)

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 December 22, 2017, and assigned it to staff member  to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated October 19, 2018, 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 port security specialist first class (PS1) who served in the Coast Guard Reserve from May 29, 1984, to May 28, 1992, asked the Board to correct her record to show that she received the National Defense Service Medal (NDSM) with service stars; service stars for the years following her initial Reserve Good Conduct Medal (RGCM); and the Pistol Marksmanship Ribbon. She also asked the Board to create a Retirement Points Statement for the year May 29, 1991, to May 28, 1992.

The applicant alleged that she is eligible to receive the NDSM with service stars under Executive Order 12776, issued on October 8, 1991, which she only recently learned about. Regarding the service stars on her RGCM, she alleged that she received her first RGCM on December 16, 1987, but did not receive any service stars for subsequent years even though she never had a break in service or any incidents of misconduct. The applicant alleged that she is eligible for Pistol Marksman Ribbon because she qualified with the pistol while in the Reserve but it is not included in her record.

In support of her application, the applicant submitted copies of the following:

- A Personnel Action form and DD 256 Honorable Discharge Certificate which both show that she was honorably discharged on May 28, 1992;

- A Page 7 dated May 28, 1992, stating that she had completed her term of enlistment;
- A Leave and Earnings Statement showing that had performed 30 IDT drills in FY 1992;
- Coast Guard Reserve Retirement Points Statements for her anniversary years ending on May 28 in 1988, 1990, and 1991;
- A December 16, 1987, letter from the Seventh Coast Guard District Commander stating that she was authorized to wear the RGCM for successful participation in the Coast Guard Reserve Program from May 29, 1984, through May 28, 1987; and
- A Small Arms Firing Record Report, which shows that she received a score of 180 on the practical pistol course on November 21, 1987.

Regarding the delay in submitting her application to the Board, the applicant stated that she did not discover the alleged errors until October 19, 2017. She argued that the Board should find it in the interest of justice to consider her application because she would like to leave her family with accurate records, medals/ribbons, and “benefits that are ever changing.”

SUMMARY OF THE RECORD

On May 29, 1984, the applicant enlisted in the Coast Guard Reserve for six years and the DD 214 in her military record shows that she served on active duty for initial training from May 29, 1984, to October 19, 1984 (4 months and 21 days). Following recruit training, for which she earned the Coast Guard Basic Training Honor Graduate Ribbon, she completed Class “A” School to enter the port securityman rating. She continued to serve in the Selected Reserve, drilling for pay and retirement points. She generally received average to above-average marks on her performance evaluations. In 1988, she received a few below-average marks on her annual performance evaluation but high marks on her evaluation covering her 13 days of ADT. She advanced from PS3/E-4 to PS2/E-5 in January 1989. She reenlisted for two years in 1990 was discharged on May 28, 1992.

The record shows that the applicant and others at her unit were awarded a RGCM in 1987 after receiving an ADT waiver for fiscal year 1986 due to the unit’s lack of funds to pay for ADT.

The applicant’s Retirement Points Statements for her Reserve anniversary years (AY) ending on May 28 of each year, show that she performed inactive duty training (IDT) and active duty for training (ADT) and received membership points as follows:

<u>AY End Date</u>	<u>IDT</u>	<u>Membership</u>	<u>ADT</u>	<u>Courses</u>	<u>Total Points (Adjusted Total)</u>
5/28/1985	20	15	173	5	213
5/28/1986	24	15	73	0	112
5/28/1987	44	15	00	0	59
5/28/1988	40	15	13	0	68
5/28/1989	52	15	12	0	79
5/28/1990	46	15	12	13	73
5/28/1991	48	15	00	0	63

The applicant's record contains a memorandum dated February 14, 1992, waiving her ADT requirement for her anniversary year ending May 28. It is not clear whether the waiver applied to her AY 1991 or AY 1992. The memorandum notes that members of the Selected Reserve were still required to complete 90% of scheduled drills to achieve a satisfactory training year. There are two Leave and Earning Statements in her record, and they show that she received 14 IDT points from October 1991 through February 1992.

Another memorandum in the applicant's record states that she was strongly encouraged to reenlist in 1992 but did not do so because her service conflicted with her civilian job.

APPLICABLE LAW AND REGULATIONS

Chapter 4.A. of COMDTINST M1650.25E, the Coast Guard Military Medals and Awards Manual, states that the NDSM is awarded to personnel who perform Honorable active service as a member of the Armed Forces for any period (inclusive) from June 27, 1950, to July 28, 1954; from January 1, 1961, to August 14, 1974; from August 2, 1990, to November 30, 1995; or from September 12, 2001, to a date to be determined by the Secretary of Defense.

Chapter 5.A.25. of the Awards Manual states that the expert and marksmanship ribbons will be awarded for achieving specified scores over a prescribed course of fire. Chapter 5.A.25.(4) states that the Pistol Marksmanship Ribbon is authorized for each Coast Guard person who qualifies as a marksman or better with the service pistol on one of the prescribed courses of fire.

Chapter 5.A.2. of the Awards Manual states that the RGCM is issued to Reserve enlisted members who have been recommended by their commanding officers for proficiency in rating, sobriety, obedience, industry, courage, and neatness throughout each qualifying period of service (three years). From January 1, 1980, through June 3, 1997, to receive a RGCM, a reservist had to complete 12 days of annual training (ADT) in each of the three consecutive years and perform 90% of 48 scheduled IDT drills (90% = 43).¹ The 90% of drills is calculated "exclusive of drills scheduled while the reservist was performing active duty or active duty for training." Chapter 5.A.2.c. states that a 3/16-bronze star is authorized for subsequent awards of the RGCM.

Footnote 1 to Table 5-1 of the Awards Manual states that completion of a member's ADT requirement for a specific year may have been waived, or IDT authorizations for a specific fiscal year may have been adjusted (e.g., an FY-92 appropriation shortfall caused IDT drill authorizations to be capped at 45, establishing 41 drills as the eligibility minimum).

¹ Footnote 1 to Table 5-1 of the Awards Manual states that completion of a member's ADT requirement for a specific year may have been waived, or IDT authorizations for a specific fiscal year may have been adjusted (e.g., an FY-92 appropriation shortfall caused IDT drill authorizations to be capped at 45, establishing 41 drills as the eligibility minimum).

VIEWS OF THE COAST GUARD

On May 22, 2018, a judge advocate with the Coast Guard submitted an advisory opinion recommending that the Board grant partial relief in accordance with a memorandum submitted by the Commander, Personnel Service Center (PSC).

PSC argued that partial relief should be granted because the applicant is eligible for the NDSM but not a Pistol Marksmanship ribbon. In addition, PSC stated that she meets the eligibility requirements for a second RGCM.

PSC stated that the applicant is eligible for the NDSM for the period August 2, 1990, to November 30, 1995, in accordance with COMDTINST M8000.2 (series,) because she was a member of the Coast Guard Reserve in good standing during that period.

PSC argued that the applicant is not eligible for the Pistol Marksmanship Ribbon because she did not attain a score of 114 points or higher in the Basic Pistol Marksmanship Course (BPMC) as required by COMDTINST M8000.2, according to the Small Arms Record Firing Reports (GC-3052) in her record. PSC submitted a copy of the Small Arms Record Firing Report which shows that she achieved a score of 87 with the pistol on November 20, 1988, and provided a copy of a page from the Coast Guard [firing] Range Training Handbook which states that any score below 114 is considered “unqualified.” PSC noted that she submitted another CG-3052 as evidence to support her request but that it only contained a score for the Practical Pistol Course.

PSC stated that the applicant is eligible for a second RGCM effective May 29, 1990. PSC noted that COMDTINST M1650.25 requires that a member attain at least 12 ADT points and 43 IDT points per year for three consecutive years in order to receive the RGCM, but stated that the applicant did not meet the IDT point requirement for the anniversary year ending May 28, 1988, because she obtained only 40 IDT that year. PSC argued, however, that COMDTINST M1650.25 also states that that for the period January 1, 1980, to June 30, 1997, completion of a member’s ADT and IDT requirement may have been waived or adjusted due to budgetary reductions in the Reserve appropriation. In light of these waivers, PSC argued that the applicant “has likely met the point requirements to be eligible for a second RGCM.”

Regarding the applicant’s request for retirement points statements from May 29, 1991, to May 28, 1992, PSC stated that according to a JDR report in her record, she earned 57 points for a satisfactory year from May 29, 1991, to May 28, 1992. However, PSC stated, the reserve point statement cannot now be replicated as these forms are no longer issued, but a satisfactory year was validated within the pay system database. PSC submitted a printout from its database showing that for AY 1992, the applicant was credited with 42 IDT points, 0 ADT points, 15 membership points, and 0 points for correspondence courses.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 23, 2018, the BCMR sent the applicant a copy of the Coast Guard’s views and invited her to respond within 30 days. She responded on June 7, 2018, and stated that she did not have any objections to the Coast Guard’s recommendations.

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.² The applicant was discharged from the Reserve on May 28, 1992, but did not submit her application to the Board until 2017. The preponderance of the evidence shows that the applicant knew of the alleged errors in her record in 1992, and her application is untimely.
3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.³ 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”⁴ 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.”⁵
4. The applicant did not explain why she waited so long to submit her application to the Board, but argued that the Board should find it in the interest of justice to consider her application because she would like to leave her family with accurate records, medals/ribbons, and “benefits that are ever changing.” Although the application is untimely, the Coast Guard has identified clear omissions in the applicant’s record which should be corrected, so the Board finds that it is in the interest of justice to waive the statute of limitations in this case.
5. The applicant alleged that her Coast Guard record is erroneous and unjust because it does not list the NDSM, service stars on her RGCM, and her expert pistol shot medal. She also alleged that her record is erroneous because it lacks a Retirement Points Statement for the year from May 29, 1991, to May 28, 1992. In considering allegations of error and injustice, the Board begins its analysis in every case by presuming that the disputed information in the applicant’s military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁶ Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”⁷

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

³ 10 U.S.C. § 1552(b).

⁴ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁵ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

⁶ 33 C.F.R. § 52.24(b).

⁷ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

6. The applicant argued that her record should be corrected to show that she earned the NDSM. The Board finds that she is eligible for the NDSM because she served during the period for which the medal is authorized and it should be listed in her record. The record shows that the applicant served honorably from May 29, 1984, to May 28, 1992, and Chapter 4.A. of the Medals and Awards Manual states that the NDSM is awarded to members for honorable active service as a member of the Armed Forces for any period from August 2, 1990, to November 30, 1995; or from September 12, 2001, to a date to be determined by the Secretary of Defense.

7. The applicant alleged that she is eligible to receive a service star on her RGCM and asked the Board to add it to her military record. Chapter 5.A.2. of the Medals and Awards Manual states that from January 1, 1980, through June 3, 1997, to receive a RGCM, a reservist had to complete 12 days of annual training (ADT) in each of the three consecutive years and perform 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.” The record shows that she received a RGCM for the three-year period ending May 28, 1987, so she would need to have performed three more consecutive years of qualifying service between May 29, 1987, and her discharge on May 28, 1992, to be eligible for a second RGCM. Although the applicant continued drilling and performing ADT, the Retirement Points Statements in her record show that she earned only 40 IDT drill points in AY 1988 and did not perform any ADT in AY 1991, although her ADT requirement might have been waived. The record does not show why she received only 40 IDT drill points in AY 1988, and there is no record of counseling about unexcused absences from drills. Although she received some low marks on her annual performance evaluation in 1988, she received good marks on her ADT evaluation, and she was promoted in January 1989. The Board believes that it is very unlikely that her command would have promoted her in January 1989 had she been skipping drills in 1988. Although she earned only 40 IDT points in 1988 and there is no written waiver in her record for that year, PSC argued that in light of the waivers granted from 1980 to 1997, she likely met the point requirements for the second RGCM. Therefore, the Board finds that the applicant has proven by a preponderance of the evidence that she is eligible to receive a second RGCM for the period May 29, 1987, through May 28, 1990.

8. The applicant also asked the Board to correct her DD 214 to show that she qualified as an expert with the pistol. The Board finds that her DD 214 should not be corrected to include her pistol qualification because she did not attain a score of 114 points or higher in the Basic Pistol Marksmanship Course (BPMC) as required by COMDTINST M8000.2, according to the Small Arms Record Firing Report (GC-3052) in her record. Her record contains a copy of a Small Arms Record Firing Report which shows that she achieved a score of 87 with the pistol on November 20, 1988, but COMDTINST M8000.2 requires a score of at least 114. PSC noted that she submitted another CG-3052 as evidence to support her request but that it only contained a score for the Practical Pistol Course, which is not the same as the Small Arms Record Firing Report.

9. The applicant asked the Board to create a Retirement Points Statements for her service from May 29, 1991, to May 28, 1992. PSC stated that it cannot now replicate a Retirement

ment Points Statement but that her satisfactory year of service is validated within the pay system database. PSC submitted a printout from the database showing that she was credited with 42 IDT points, 0 ADT points, 15 membership points, and 0 points for correspondence courses for AY 1992, and this printout was sent to the applicant with the advisory opinion. Accordingly, the Board finds that no further relief is warranted in this regard.

10. Therefore, the Board will grant partial relief by directing the Coast Guard to correct the applicant's record to show that she is eligible to receive the NDSM and a second RGCM. Her request to correct her record to show that she qualified as an expert with the pistol and to enter a Retirement Points Statement for AY 1992 should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former PS1 [REDACTED], USCGR, for correction of her military record is granted in part. The Coast Guard shall correct her record to show the following:

- She is eligible to receive the National Defense Service Medal for her Reserve service from May 29, 1984, to May 28, 1992; and
- She is eligible to receive a second Reserve Good Conduct Medal for her Reserve service from May 29, 1987, to May 28, 1990.

All other requests are denied.

October 19, 2018

