

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-199

████████████████████
██████ FS2 (former)

FINAL DECISION

This is a proceeding under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the applicant's completed application on August 30, 2018, 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 June 21, 2019, 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 food service specialist second class (FS2/E-5) who served on active duty in the Coast Guard from 2004 to 2008 and in the Reserve until 2015, asked the Board to correct her record to show that she was awarded a Reserve Good Conduct Medal (RGCM). She stated that her service in the Reserve makes her eligible for the medal.

SUMMARY OF THE RECORD

On July 6, 2004, the applicant enlisted on active duty in the regular Coast Guard. She received a regular Coast Guard Good Conduct Medal during this enlistment for the three-year period from November 13, 2004, through November 12, 2007. She was honorably discharged and released into the Reserve on July 2, 2008.

The applicant served in the Individual Ready Reserve (IRR) from July 3, 2008, to October 21, 2008, and in the Selected Reserve (SELRES) from October 22, 2008, through May 8, 2013. She was placed on the Active Status List (ASL) on May 9, 2013, until she was separated from the Reserve on January 26, 2015, due to an unfitting condition that was not incurred while entitled to receive basic pay.

The applicant's annual Reserve Balance Statement shows that she performed inactive duty training (IDT/drills) and active duty for training (ADT) in each anniversary year (AY)

ending on July 5th as follows:

AY End Date	IDT Drill Points	Reserve Management Period Points	Membership Points	Active Duty Training Points	Unadjusted Total Points
7/05/2009	40	1	15	0	56
7/05/2010	38	2	15	6	61
7/05/2011	58	5	15	33	111
7/05/2012	48	2	15	3	68
7/05/2013	33	4	15	26	78
7/05/2014	0	0	15	0	15
7/05/2015	0	0	15	0	15

APPLICABLE LAW AND REGULATIONS

Chapter 5.A. of the Medals and Awards Manual, COMDTINST M1650.25E, 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. The required period of service is three consecutive years, and members must not have received any judicial or non-judicial punishment or received an evaluation with average marks lower than a 3 (out of 5) during the three years. In addition, since October 2002, to receive an RGCM, a reservist has had to earn a minimum of 70 retirement points per anniversary year.¹

Chapter 5.A.2.a.(7) of the manual notes that active duty service that is not applied toward a regular Coast Guard Good Conduct Medal (GCM) may be applied toward the consecutive three-year requirement of an RGCM:

EXAMPLE: An OS2 is released from active duty and immediately affiliates with the reserve. The member was awarded a Good Conduct Medal following three years of active duty. The member carries forward 1 year, 4 months, and 27 days creditable active duty good conduct time toward the Reserve Good Conduct Medal. Calculate that fraction of an active duty year (40%) as an equal fraction of the annual reserve 70-point requirement, or 28 points. As a result, this member may apply one year toward their initial Reserve Good Conduct Medal, plus 28 points toward the minimum point requirement during their first reserve anniversary year.

VIEWS OF THE COAST GUARD

On January 23, 2019, a Judge Advocate (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 and the applicant did not provide any justification for the untimeliness of her application for relief.

¹ Assumed point total represents IDT (43), ADT-AT (12), and membership (15), although points may be accumulated in any combination from any source, including correspondence courses and funeral duty.

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 does not qualify for the RGCM because she did not meet the 70 retirement point minimum each year for three consecutive years.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 4, 2019, the BCMR sent the applicant a copy of the Coast Guard's views and invited her 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.² The applicant was discharged from active duty on July 2, 2008, but did not submit her application to the Board until 2018. The applicant did not claim that she was unaware of the existence of the RGCM when she was a member of the Reserve, and she presumably was. Therefore, the Board finds that 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 provide any justification for her delay in seeking the RGCM, and the Board's cursory review of the merits of her request indicates that it cannot prevail. The eligibility criteria for the ribbon include three consecutive years of service in which the reservist has earned a minimum of 70 retirement points each year. However, the applicant's points statement shows that she did not fulfill this requirement. The record shows that she earned 56 retirement points for her anniversary year ending July 5, 2009, and in the following six years earned 61 points, 111 points, 68 points, 78 points, 15 points, and 15 points. Although the applicant drilled fairly regularly while in the Selected Reserve, her points statement shows that she did not meet the strict requirements for the RGCM over three consecutive years and so did

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).

not meet the criteria for a RGCM.⁶ Her points statement is presumptively correct,⁷ and the applicant has not submitted evidence to rebut it. Based on the record before it, the Board finds that the applicant's claim cannot prevail on the merits.

5. Accordingly, the Board will not excuse the application's untimeliness or waive the statute of limitations. The applicant's request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁶ As Chapter 9.A. of the Medals and Awards Manual notes, the performance requirements for an RGCM were set high to encourage reservists to exceed the minimum standard for satisfactory participation.

⁷ 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 FS2 [REDACTED], USCGR, for correction of her military record is denied.

June 21, 2019

