

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2010-229

**XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX**

FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case after receiving the applicant's completed application on August 10, 2010, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated July 14, 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 AND ALLEGATIONS

The applicant asked the Board to correct her end of service and expected active duty termination date from May 28, 2013, to May 1, 2010, and then to release her from active duty and enter an extension contract in her record to cover her service from May 1, 2010, until her date of release. The applicant stated that she signed a six-year regular reenlistment contract on May 1, 2004, and so her termination date should have been May 1, 2010. However, the Coast Guard refused to release her from active duty on that date.

SUMMARY OF THE RECORD

The applicant originally enlisted in the Coast Guard Reserve on October 23, 1990, for eight years. She participated regularly until December 27, 1993, when she enlisted in the regular, active duty Coast Guard. Upon her release from active duty (RELAD) on February 5, 1998, the applicant continued drilling in the Reserve under her original enlistment contract. On October 17, 1998, she reenlisted in the Reserve for six years, through October 16, 2004. (This is the last Reserve enlistment contract in her record.)

On May 1, 2004, the applicant reenlisted in the regular, active duty Coast Guard for a term of six years, through April 31, 2010. (This is the last active duty enlistment contract in her record.) However, on November 18, 2006, the applicant submitted a request for a temporary

two-year separation from active duty in accordance with the Temporary Separation Policy.¹ She included with her request a signed Statement of Understanding of Conditions for Temporary Separation and a Notice of Intent to affiliate with the Reserve during her two-year separation. The Statement of Understanding acknowledges that she would be discharged or released from active duty for up to two years; could enlist in the Reserve to affiliate with the Reserve during her temporary separation; and would have to reenlist to return to active duty.

The applicant's request for a temporary separation was approved, and she was discharged on June 1, 2007. Although she affiliated with the Reserve during her temporary separation, she did not reenlist in the Reserve and so had no Reserve enlistment contract in effect since her last Reserve contract had expired on October 16, 2004.

On December 5, 2008, the applicant submitted a Notice of Intent to Return to Active Duty After Temporary Separation, which states, in pertinent part, "I hereby notify you I intend to return to Active Duty on 01 July 2009 under the provisions of the temporary separation policy. I understand on return to Active Duty, I will enlist in or be appointed to the same grade or rate last held while serving on Active Duty."

On January 27, 2009, the Personnel Command issued orders to discharge the applicant from the Reserve and enlist her in the regular Coast Guard on May 29, 2009, in accordance with Article 1.G.2.a. of the Personnel Manual.² The orders specified that "no changes to this authorization are allowed without prior written approval from CGPC-epm-1." The applicant returned to active duty, but there is no new reenlistment contract in her record.

On August 5, 2010, YN1 S, a yeoman, first class, assigned to the Pay and Personnel Center, prepared a new Statement of Creditable Service (SOCS) for the applicant, which shows that her adjusted active duty base date (ADBBD) was then October 9, 1989.³ However, no copy of this SOCS appears in her Headquarters record.

VIEWS OF THE COAST GUARD

On January 5, 2011, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant partial relief and adopting the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

The PSC stated that, in accordance with the orders issued on January 27, 2009, and Article 1.G.2.a. of the Personnel Manual, when the applicant returned to active duty in 2009, she should have signed an indefinite reenlistment contract. The PSC stated that if she has an indefi-

¹ Article 12.F. of the Personnel Manual allows active duty members to separate from active duty for up to two years to pursue education, develop a personal interest, or care for children. Article 12.F.2.1.a. states that the policy allows enlisted members to separate temporarily "with a guarantee of reenlistment." Article 12.F.2.1.b. states that under the policy, members may affiliate with the Reserve during their temporary separation from active duty.

² Article 1.G.2.a. of the Personnel Manual states that members with more than 10 years of active duty must reenlist for an indefinite period rather than a term of 3, 4, 5, or 6 years.

³ ADBBDs are calculated by totaling all periods of active duty and subtracting that time from the current date. Therefore, ADBBDs are adjusted whenever a member is serving on inactive duty in the Reserve.

nite reenlistment contract in her record, the applicant may request a voluntary separation from active duty in accordance with Article 12.B.7.d. of the Personnel Manual.⁴

The PSC submitted a Statement of Creditable Service for the applicant showing that as of April 8, 1994, her adjusted active duty base date (ADBBD) was April 21, 1993. Based on that old ADBBD, the PSC alleged that the applicant's "expected active duty termination date/end of service date should be April 21, 2025, a period of 30 years plus 2 additional years to account for her temporary separation period."

The PSC recommended that the Board correct the applicant's record to show that her expected active duty termination date/end of service date is April 25, 2025, and to show that she signed an indefinite reenlistment contract on May 29, 2009, so that she may seek separation in accordance with Article 12.B.7.d of the Personnel Manual.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 2, 2011, the applicant responded to the views of the Coast Guard. The applicant stated that the PSC's discussion of her ADBBD is obsolete. She stated that the Coast Guard prepared a new Statement of Creditable Service for her on July 3, 2010, which shows that her ADBBD was October 9, 1998, as of that date.

The applicant stated that when she returned to active duty in 2009, she intended to and tried to reenlist for an indefinite period. However, her unit discovered that the database showed an erroneous expiration of enlistment date of May 28, 2013, and would not let her reenlist. She and her unit's yeoman tried for more than a year to get the problem corrected to no avail and she was ultimately directed to apply to the BCMR. She stated that the lack of a reenlistment contract in her record also delayed her ability to request release from active duty but that she did so in October 2010, and her unit "shopped" her billet for a replacement in the 2011 transfer season.

With regard to her reenlistment, the applicant stated that she would sign a backdated indefinite reenlistment contract only if her request for release from active duty as of June 1, 2011, is approved. She stated that her active duty spouse has orders to retire in 2011, so she wants to return to the Reserve and attend graduate school.

SUBSEQUENT EVENTS

On April 26, 2011, in response to an email from the BCMR staff inquiring about her status, the applicant stated that the Personnel Service Center (PSC) had agreed to discharge her from active duty as of June 1, 2011, and she asked the Board to place her case on hold until after her discharge. On June 3, 2011, the BCMR staff learned from the PSC that the applicant had been "released from active duty and transferred to the IRR [Individual Ready Reserve] component" as of June 2, 2011. Subsequently, the applicant reported that she had been released from active duty; that her DD 214 shows a separation date of June 1, 2011, and "DISCHARGE," rather than "RELAD," in block 23; that she signed a two-year Reserve reenlistment contract on

⁴ Article 12.B.7.d. of the Personnel Manual provides procedures for members serving on indefinite reenlistment contracts to be voluntarily discharged at the discretion of the Personnel Service Center.

June 2, 2011; and that the only issues remaining for the Board to decide are what contracts should be entered in her record to cover her recent Reserve and active duty service.

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 under 10 U.S.C. § 1552. The applicant was timely filed.

2. The applicant alleged that her end of service/expected active duty termination date is erroneous and that although her true end of service date, May 1, 2010, had passed, the Coast Guard had refused to release her from active duty. 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.⁵

3. The applicant alleged that her end of service date should have been May 1, 2010, instead of May 28, 2013, because she enlisted on active duty for six years on May 1, 2004. However, the applicant's May 1, 2004, enlistment ended when she was voluntarily discharged from active duty on June 1, 2007. Because the 2004 enlistment ended upon her discharge, the applicant needed to reenlist in the regular Coast Guard to return to active duty on May 29, 2009. The Personnel Manual contains no provisions for reviving enlistments that have already terminated, and the requirement to reenlist was noted in the documents she signed on November 18, 2006, to request temporary separation; on her request to return to active duty dated December 5, 2008; and on the orders authorizing her return to active duty dated January 27, 2009.

4. The May 28, 2013, end of service date in the Coast Guard's database suggests that someone entered a 4-year reenlistment in her record when she returned to active duty on May 29, 2009. However, an indefinite reenlistment contract should have been entered in her record instead because the Statement of Creditable Service prepared for her on August 5, 2010, shows that she had accumulated more than ten years of active duty in May 2009.⁶ Therefore, her record should be corrected to show that she signed an indefinite regular reenlistment contract on May 29, 2009.

5. The applicant affiliated with the Reserve during her temporary separation from June 2, 2007, through May 28, 2009, but there is no Reserve enlistment in her record to cover this service because her last Reserve enlistment ended on October 16, 2004. Therefore, her

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

⁶ Article 1.G.2.a. of the Personnel Manual states that personnel reenlisting in the regular, active duty Coast Guard who have more than 10 years of active duty must reenlist for an indefinite period.

record should be corrected to show that she reenlisted in the Reserve for two years on June 2, 2007.⁷

6. In preparing the advisory opinion, the PSC relied on a Statement of Creditable Service (SOCS) prepared for the applicant in 1994, which shows an ADBD of April 21, 1993. However, her active duty service has been intermittent, and on August 5, 2010, the PPC prepared a new SOCS for her showing that her ADBD was then October 9, 1989. No copy of this SOCS appears in her Headquarters record, so the Board will order the Coast Guard to enter it in her record.

7. Accordingly, the applicant's record should be corrected to show that following her discharge from active duty on June 1, 2007, she reenlisted in the Reserve for two years on June 2, 2007, and reenlisted indefinitely in the regular Coast Guard on May 29, 2009, but was voluntarily discharged from the regular Coast Guard on June 1, 2011, and reenlisted in the Reserve for two years on June 2, 2011. Any dates or documents in her record that conflict with these facts should be corrected to reflect these facts. In addition, the SOCS prepared by the PPC on August 5, 2010, should be entered in her Headquarters record.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

⁷ Article 1.G.2.c. of the Personnel Manual states that reservists may reenlist in the Reserve for terms of 2, 3, 4, 5, 6, or 8 years.

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxx, USCGR, for correction of her military record is granted as follows:

The Coast Guard shall correct her record to show that following her discharge from active duty on June 1, 2007, she reenlisted in and affiliated with the Coast Guard Reserve for two years on June 2, 2007; reenlisted indefinitely in the regular Coast Guard on May 29, 2009; was voluntarily discharged from the regular Coast Guard on June 1, 2011; and reenlisted in the Reserve for two years on June 2, 2011. Any of her records that conflict with these facts shall be corrected to reflect these facts.

The Coast Guard shall also enter in her record the Statement of Creditable Service prepared by the Pay and Personnel Center on August 5, 2010, which shows that her active duty base date at the time was October 9, 1989.

