


**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction
of Coast Guard Record of:



BCMR Docket
No. 1998-061

FINAL DECISION

 Chairman:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on February 24, 1998, upon the Board's receipt of an application for correction from the applicant.

The final decision, dated January 28, 1999, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant is a chief yeoman (YNC; pay grade E-7) in the Coast Guard Reserve. He was honorably discharged from the active duty Coast Guard on July 29, 1990 and, at that time, became a reservist. During his first year as a reservist, July 30, 1990 to July 29, 1991 [disputed year], he earned a total of 30 reserve retirement points. He needed to earn 50 points to have a satisfactory year of service. He asked the Board to correct his record by showing the disputed year as a satisfactory year for retirement purposes.

REQUEST FOR RELIEF

The applicant asked to have his first year as a reservist count as a 50 point reserve retirement year (satisfactory year), notwithstanding the fact that he earned a total of only 30 such points that year. He alleged that he did not know that a person needs 50 total retirement points to have a "good year" for retirement purposes. He also alleged that the Coast Guard did not counsel him as to the retirement options available for the disputed year, and he alleged that he did not receive any written materials explaining the consequences of not earning 50 points during his first year as a reservist.

The applicant did not apply to have his annual reserve retirement record for the disputed year (July 1990 to July 1991) corrected until 1998, approximately eight years after the 1990/1991 statement was issued.

VIEWS OF THE COAST GUARD

On October 19, 1998, the Commander of the Coast Guard Personnel Command (CGPC) submitted an advisory opinion recommending that the Board not correct the applicant's retirement point schedule for the disputed year. The Commander did say that the applicant would be eligible for a reserve retirement, if he continues to drill satisfactorily through July 29, 1999.

CGPC said that a minimum of 50 points is necessary for a satisfactory retirement year. This requirement is statutory. (10 U.S.C.12732(a)(2)). The CGPC said the applicant was notified that if he earned less than 50 total points in any year, that year was not considered satisfactory service for retirement. The applicant asserted that he was never counseled about the 50 point requirement, but CGPC said "[t]here is neither a statutory nor policy requirement for such counseling."

On December 22, 1998, the Chief Counsel of the Coast Guard agreed with CGPC and recommended the denial of relief in this case. The Chief Counsel recommended that the application be denied for untimeliness or lack of proof. The Chief Counsel said that the application should have been filed within three years and may not be considered unless it includes sufficient evidence to warrant waiver of the timeliness requirement.

The Chief Counsel said that section 12732(a) does not provide the Coast Guard with any authority to credit the applicant with reserve retirement points when the applicant did not serve the time required to earn the points. "The Coast Guard is clearly not authorized to credit a member for drill points for time not served." The Chief Counsel said further that "the applicant has not established that the Coast Guard owed him a duty of counseling."

Article 4.C.3 of the Reserve Administration and Training Manual requires reserve unit commanding officers to counsel members about their duty to meet the annual reserve minimal participation requirements. The Article does not, however, "establish a requirement to brief or provide information on the 50 point satisfactory year criteria. . . . It "is necessarily incumbent on reservists to manage their own time [to] meet drilling requirements."

RESPONSE OF THE APPLICANT

On January 6, 1999, the Board sent a copy of the views of the CGPC and the views of the Chief Counsel of the Coast Guard to the applicant. The applicant was encouraged to respond. No response was received by the Board, however.

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 submissions, and applicable law.

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10, United States Code.

2. The application was submitted to the Board approximately eight years after the date of the alleged error or injustice. The application was not timely, since an application is timely only if it is filed within three years of the error or injustice.

3. Untimeliness can be waived if the Board finds that it is in the interest of justice. The Board, in determining whether to waive untimeliness, "should consider the reasons for the delay and the plaintiff's potential for success on the merits, based on a cursory review, as factors in the interest of justice analysis." Allen v. Card, 799 F.Supp. 158, 166 (D.D.C. 1992). To be timely, an application must be submitted within three years.



4. The applicant stated that he did not file his application within three years after the alleged error because he did not realize that he could file such an application. He filed an application for correction approximately eight years after the disputed year.

5. A cursory review of the merits leads to the conclusion that the applicant did not earn enough retirement points in the disputed year to have a satisfactory retirement year from July 90 to July 91.

6. This cursory review indicates that the applicant was not denied the required point total because of an error or injustice on the part of the Coast Guard.

7. Accordingly, the application should be denied for untimeliness.

ORDER

The application to correct the military record of 
 USCG, is denied.

