

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:



BCMR Docket
No. 2000-079

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. It was docketed on February 28, 2000, upon the BCMR's receipt of the applicant's complete application for correction of his military record.

This final decision dated December 14, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, a boatswain's mate third class (BM3; pay grade E-4) in the Reserve, asked the Board to correct his record to show that he earned a satisfactory year of service for the year from January 29, 1997 to January 28, 1998. Such a correction would make him eligible to receive the Reserve Good Conduct Award because it would give him three consecutive years of satisfactory Reserve participation. He asked that five of the extra drill points he earned during the anniversary year that ended January 28, 1997, be added to the anniversary year that ended on January 28, 1998.

To be eligible for a Reserve Good Conduct Award, a member must have three consecutive years of satisfactory service. Without the requested correction, the applicant has only two consecutive years of satisfactory service. To have a satisfactory year in the Reserve, the applicant must earn a minimum of 50 points during each anniversary year. (An anniversary year is the date of entry in to the Reserve to the day preceding the anniversary of entry.) The applicant's anniversary year runs from January 29 of one year to January 28 of the following year. The applicant stated that he earned only 45 points for the anniversary year January 29, 1997 to January 28, 1998.

A leave and earning statement showed that during the earlier anniversary year, which ended January 28, 1997, the applicant performed 16 additional drills¹ without pay. The applicant stated that he performed these extra drills "not thinking . . . that [they] would not be applied to the next year." He stated that "due to the difference between anniversary and fiscal year endings, . . . [he] should be credited with the extra drills that were performed in the prior year." The applicant submitted evidence showing he earned the following retirement points during the previous eight anniversary years.

¹ Drill is a common term used to describe various forms of Reserve inactive duty training evolutions. One point is given for a single drill or one full day of active duty.

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|-----------------------|------------|
| 1/29/1998 – 1/28/1999 | 65 points |
| 1/29/1997 – 1/28/1998 | 41 points |
| 1/29/1996 – 1/28/1997 | 92 points |
| 1/29/1995 – 1/28/1996 | 64 points |
| 1/29/1994 – 1/28/1995 | 49 points |
| 1/29/1993 – 1/28/1994 | 31 points |
| 1/29/1992 – 1/28/1993 | 45 points |
| 1/29/1991 – 1/28/1992 | 162 points |

The applicant stated that for the anniversary year ending in 1998, he actually has 45 points rather than 41 because he has received pay for four additional drills.

Views of the Coast Guard

On September 22, 2000, the Board received an advisory opinion from the Chief Counsel of the Coast Guard recommending that the Board deny the applicant's request to have five points added to the anniversary year ending January 28, 1998.

The Chief Counsel stated that the applicant has failed to prove he completed the three consecutive "satisfactory" reserve years necessary to receive the Coast Guard Good Conduct Award. Coast Guard ALDIST 033/98 provides that a member of the Coast Guard Reserve is eligible for the Reserve Good Conduct Medal if the member has earned at least 50 retirement points per anniversary year for three consecutive years and has obtained satisfactory conduct marks. The Chief Counsel stated that since the applicant failed to earn 50 or more retirement points for any three consecutive years during anniversary years 1991 through 1999, he did not meet the qualifications for the Coast Guard Good Conduct Medal.

With respect to the applicant's request that drill points earned during anniversary year 1996 be transferred to anniversary year 1997, the Chief Counsel stated that neither 10 USC 12732 nor Coast Guard regulations permit reserve retirement points earned during one anniversary year to be transferred to another anniversary year.

The Chief Counsel stated that even with the additional 4 points the applicant claimed that he earned for the anniversary year ending 1998, the applicant would only have 45 points for the year. He needs 50 to have a satisfactory year and to be eligible for a good conduct award. Therefore, the Chief Counsel recommended that the Board deny the applicant's request to transfer reserve retirement points credited during anniversary year 1996 -1997 to anniversary year 1997 -1998.

The Chief Counsel stated that the applicant also appeared to be asking that his annual retirement point statement be corrected to include the extra drills allegedly completed in FY [fiscal year] 96. The Chief Counsel recommended that the Board dismiss this portion of the request without prejudice. He stated that the request should be denied because the applicant failed to exhaust an administrative remedy that was available to him through the Coast Guard. Article 8.C.10 of the Reserve Policy Manual states that "[R]eservists who find discrepancies on their Reserve Retirement Point Statement shall send a request for correction with supporting documents via the chain

of command to HRSIC. . . HRSIC shall review and resolve discrepancies if the problem can be identified." The Chief Counsel stated that there is no evidence in the record that the applicant ever submitted such a request. He offered the following in support of this position of the applicant request denied for failure to exhaust administrative remedies:

It is axiomatic that a military member must exhaust all other manner of administrative remedies prior to proceeding to the BCMR. See Ortiz v. Secretary of Defense, 41 F.3rd 738 (D.C. Cir. 1994), Sherengos v. Seamans, 449 F.2d 333 (4th Cir. 1971) and Muse v. United states, 13 Cl. Ct. 372 (Ct.Cl. 1987). Specifically, the Court in Sherengos stated that the Statute [10 USC § 1553] created a "civilian administrative body of last resort" to assist an aggrieved servicemen. *Id.*, 449 F.2d at 334. Moreover, the Court in Muse opined that "requiring exhaustion here is consistent with the hierarchy of administrative boards established by Congress and give the Review Board, staffed with military personnel who are positioned to conduct a factual inquiry, a first opportunity to correct any error or injustice before allowing consideration by the Correction Board, a panel of civilians." Sherengos, 449 F.2d at 334. Both legislative intent and case law on this issue under 10 USC 1552 are clear; a service member must exhaust all available administrative remedies as a precursor to the BCMR.

Applicant's Response to the Views of the Coast Guard

On September 21, 2000, a copy of the Coast Guard's views was sent to the applicant with an invitation for him to submit a response. He did not submit a response.

RESERVE POLICY MANUAL

The Reserve Policy Manual contains the following pertinent definitions:

Anniversary Year - "Anniversary date is the date the member entered into active service or into active status in a Reserve component. This date changes only if the member has a break-in-service through transfer to an inactive status list, transfer to a temporary disability retired list, transfer to the Retired Reserve, or discharge to civilian life for a period greater than 24 hours. When a member with a break-in-service returns to an active reserve status or to active status, the revised anniversary date shall be the date of return to reentry."

Retirement point - "A numerical unit, used to credit an individual for active duty, membership and participation in reserve training for use in determining retirement benefits. . . ."

Satisfactory Federal Service - "A year of satisfactory federal service is any anniversary year during which a reservist earned a minimum of 50 retirement points. The accumulation of 20 such years is required for retirement with pay. . . ."

Article 8.C.10.d. of the Reserve policy Manual states in pertinent part, that "[n]o more than 75 retirement points, exclusive of those earned for any form of active duty

may be credited in an anniversary year. . . . Seventy-five points maximum is for all IDT [inactive duty training].

FINDINGS AND CONCLUSIONS

The Board makes the following findings of fact and conclusions of law on the basis of the applicant's record and submissions, the Coast Guard's submission, and applicable law:

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

2. The Coast Guard followed the regulation in this case. The Reserve Policy Manual requires that retirement points must be credited in the anniversary year in which the duty was performed. The points that the applicant is asking to be credited to the anniversary ending 1998 were not earned during that anniversary year, but during the previous anniversary year. Absent an error or injustice, it would be a violation of the regulation for the Board to order that points be added to an anniversary year that were not earned during that particular year. The applicant has failed to establish an error in this case.

3. Neither has the applicant submitted sufficient evidence to show that he suffered an injustice with respect to this situation. The applicant should know how retirement points are credited having been a member of the Coast Guard Reserve since 1991.

4. The Board disagrees with the Chief Counsel's assertion that the applicant is seeking to have the extra drills performed in FY 96 added to his retirement point statement. A review of the documentation submitted by the applicant shows that he has been given credit for those extra drills. The 100 drill points accumulated by the applicant in anniversary year ending in 1997 were reduced, in accordance with the regulation, to 92 points (only 50 are needed for a satisfactory year). The applicant is asking the Board to add five of the extra drills that he earned in the anniversary year ending in 1997 to the anniversary ending in 1998. As stated above, in the absence of an error or injustice, the Board cannot grant this relief.

5. The Board finds that the exhaustion of administrative remedies, as argued by the Coast Guard, is not applicable, since the applicant has not requested that his retirement points statement be corrected to reflect the extra drills he performed in 1996. As stated above, the applicant has already been credited with these drills. Accordingly, relief should be denied.

ORDER

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

