

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2003-036**

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**FINAL DECISION**

 **Deputy Chair:**

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The BCMR docketed the applicant's request for correction on January 27, 2003.

This final decision, dated October 30, 2003, is signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT'S REQUEST**

The applicant, now serving as a lieutenant in the Reserve, asked the Board to correct his record to show that he earned at least 50 points in his anniversary years ending in 1997 and 1998, so that each anniversary year would count as a satisfactory year of federal service for retirement purposes.<sup>1</sup> He alleged that because the Coast Guard erroneously recorded his participation as unsatisfactory during those two years, he was not selected for promotion to lieutenant commander (LCDR), and he asked the Board to correct that error by promoting him and by correcting his record to show sufficient time in the grade of LCDR for promotion to commander (CDR). He also asked the Board to award him appropriate back pay and allowances, with interest.

**APPLICANT'S ALLEGATIONS**

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<sup>1</sup> Active Reservists are required to earn at least 50 participation points in each "anniversary year" of their service for that year to count as a satisfactory year for retirement purposes. Reservists in the Individual Ready Reserve are required to earn at least 27 points.

The applicant alleged that the Coast Guard erred in administering the Reserve program by “fail[ing] to carry out its obligations to ‘induce satisfactory participation’ as required by Reserve Policy Manual, COMDTINST M1001.28, section 4.B.1.” He alleged that in October 1996, the Coast Guard arbitrarily and erroneously changed the end date of his anniversary year from October 1 to July 2 and never notified him of the change.

The applicant alleged that the change in his anniversary date was erroneous because under the Reserve Administration & Training Manual (RATMAN), “the anniversary year extends from the date of entry or reentry [into the Reserve] to the day preceding the anniversary of the entry or reentry.” However, on March 28, 1997, the Reserve Policy Manual (RPM) was issued to replace the RATMAN, and under it, anniversary dates are calculated from the day the reservist takes the oath of office. He alleged that his anniversary end date was changed in October 1996 in anticipation of the upcoming new regulation in the RPM.

The applicant alleged that in August 1997, after his anniversary year was altered and two months after his anniversary year ended without his knowledge, he received an “Annual Screening for Participation & Transfer to Inactive Status List Letter.” He requested and was granted a waiver so that he would not be transferred to the Inactive Status List (ISL). However, because his request was not timely processed, his record indicated (erroneously and unknown to him) that he was on the ISL when it was reviewed by the 1997 selection board, and he so was not selected for promotion.

The applicant stated that he continued to drill as before but then, in August 1998, received another such letter. In response to the second letter, he alleged, he chose to challenge his point accrual during the anniversary year. He alleged that this request was also untimely processed, and so his record once again showed his status as inactive (erroneously and unknown to him) when it was reviewed by the 1998 selection board, which also passed him over for promotion.

On May 11, 1999, the applicant alleged, he was finally informed that his anniversary year end date had been changed to July 2. He submitted a copy of this letter, the final sentence of which stated that “[i]f you fail to earn a minimum of 50 points for another anniversary year, in your current grade, you are subject to transfer to the Standby Reserve Inactive Status List (ISL).” The applicant alleged that because of that sentence, he concluded that nothing more was required of him to avoid being transferred to the ISL except to drill and earn enough points to complete satisfactory years.

The applicant alleged that despite the language in the May 11, 1999, letter, and other written assurances that he was in an active status, he had already been transferred to the ISL because of the “untimely processing of [his] requests.” Moreover, he alleged, the erroneous indication in his record that he was inactive when his record was reviewed by the selection boards in 1997 and 1998 caused him to fail of selection for

promotion and be separated. He noted that Article 4.B.4. of the RPM states that the failure to earn the minimum number of retirement points in an anniversary year "could have serious consequences upon [a reservist's] career potential." He alleged that he did not learn that he had been transferred to the ISL in 1997 and 1998 until August 2002.

The applicant alleged that in light of his pending separation in the spring of 2000, his command, knowing that an error had occurred but unable to fix it, petitioned for his retention in the Reserve through the Officer-to-Enlisted Program. Therefore, beginning on July 1, 2000, he drilled as an enlisted Reserve member in pay grade E-4, until he was recommissioned as an officer as a result of a direct commission selection panel.

The applicant alleged that the Coast Guard failed to take any steps to induce his satisfactory participation during his new anniversary years ending in July 1997 and 1998, as required under the RATMAN and RPM. Moreover, he alleged, the failure to notify him timely of the change to his anniversary year foreclosed his ability to perform additional drills in order to complete satisfactory years or to challenge the change of anniversary date. He alleged that the letters he received two months after the end date of each new anniversary year could not be considered "reasonable" efforts at inducement, as required by the RPM. In support of this allegation, he submitted an affidavit from a retired Reserve captain, who stated that during his years in the Reserve he

was regularly responsible for monitoring the status of personnel in my command including their drilling status in relationship to completion of drilling requirements for participation in the Coast Guard's Reserve program. It was the practice in my Commands to follow the guidance provided in COMDTINST M1001.27A, including counseling members for poor performance and placing a record of the counseling in the member's record. Notice of the member's poor performance was always made and an attempt to gain compliance was proffered to ensure that we retained as many members in the Coast Guard Reserve as possible.

## **SUMMARY OF THE RECORD**

On September 29, 1986, the applicant enlisted in the Coast Guard. He attended Officer Candidate School and was discharged on July 1, 1987, to accept a Reserve commission. On July 2, 1987, he signed his oath of office as an ensign (pay grade O-1) in the Selected Reserve and began serving on a three-year active duty contract. On January 2, 1989, he was promoted to lieutenant junior grade (O-2). He was released from active duty on July 1, 1990. A Reserve Retirement Points Statement (form CG-4175) that he received in January 1991 indicated that his anniversary date was October 1st.

Upon his release from active duty, the applicant began drilling as a vessel compliance team leader. On January 2, 1992, he was promoted to lieutenant (O-3). A "Computation of Retirement Credit Points" dated June 15, 1992, in the applicant's record shows that he satisfactorily participated in the Reserve in the anniversary year

from July 2, 1990, through July 1, 1991, by earning 72 points. However, his next CG-4175 still showed his anniversary date as October 1, 1993. In 1992, he became a marine inspector and continued to accumulate years of satisfactory participation toward retirement by earning at least 50 points per anniversary year until July 1, 1996. His performance evaluations up to this time were consistently good. Pay stubs he received in 1995 showed his pay base date to be October 29, 1986; his active duty termination date to be July 1, 1990; and his expected loss date to be July 1, 2017.

In August 1996, the applicant requested a transfer to the Individual Ready Reserve (IRR). His request was granted on August 19, 1996. On October 5, 1996, an electronic database was corrected to show that his anniversary date was July 2nd.

The applicant's evaluation for June 1, 1996, through May 31, 1997, contains no numerical scores or comments because he was in the IRR. In the anniversary year ending July 1, 1997, the applicant received a total of 23 points. (All reservists receive a minimum of 15 points a year based on membership alone rather than for drills performed.) On August 25, 1997, the Coast Guard sent the applicant a certified form letter stating that because he had "earned fewer than the required minimum of 50 points<sup>[2]</sup> in your anniversary year ending 2 July 1997," his options were to challenge that determination, to seek a waiver of the participation standard, or to request an honorable discharge. It also stated that if he did not act within 30 days of the date of the letter, he would be transferred to the ISL and that members on the ISL. (Members on the ISL cannot participate in any Reserve activities or accrue retirement points until they return to active status.)

The applicant did not challenge the Coast Guard's determination. On September 25, 1997, he submitted to his command a request for a waiver of the participation standard, stating that he planned to "be actively participating in the near future. I plan to resume participation in the Ready Reserve on or about 1 Jan 1998." However, the waiver request was not timely forwarded to the Coast Guard Personnel Command (CGPC). Therefore, on October 20, 1997, the applicant was sent a certified letter stating that he would be transferred to the ISL on November 15, 1997.

On November 6, 1997, his command forwarded his request for a waiver to CGPC. On November 7, 1997, CGPC sent the applicant a letter granting him a waiver of the point requirement "for your anniversary year ending 2 July 1997. ... You are reminded that this waiver does not award you a satisfactory year for federal retirement purposes." CGPC also canceled the applicant's pending transfer to the ISL.

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<sup>2</sup> Because the applicant was on the IRR, the actual number of points he needed to earn during the anniversary year ending on July 1, 1997, was 27, rather than 50.

On November 11, 1997, the applicant left the IRR and returned to active status in the Selected Reserve. According to a CG-4175 in the applicant's record, in the anniversary year ending on July 1, 1998, he received a total of 31 points. On August 26, 1998, the Coast Guard sent the applicant a certified letter stating that because he had failed to earn the required minimum number of points and had already been granted a waiver for not meeting the minimum point requirement in 1997, his only options were to challenge the calculation of his points or to resign his commission and receive an honorable discharge. It also stated that if he did not act within 30 days of the date of the letter, he would be transferred to the ISL.

The applicant was not selected for promotion to lieutenant command (LCDR) by the promotion year (PY) 1999 selection board, which met from October 26 to November 4, 1998. On November 10, 1998, CGPC sent him a letter announcing his transfer to the ISL. However, the record indicates that he was allowed to continue drilling in an active status even though inactive members are precluded from drilling.

On April 13, 1999, the applicant sent a letter to CGPC, stating that his original anniversary date had been October 1st and that his drills "were carried out in line with my original Anniversary Date and participation is in accordance with COMDTINST M1001.28. This includes 12 days ADT carried out 3 Aug 1998 through 14 Aug 1998 as well as 18 consecutive IDT Drills from 15 August 1999 through 23 August 1999."

On May 11, 1999, CGPC sent a letter to the applicant stating that his transfer to the ISL on November 10, 1998, had been cancelled. CGPC stated that his anniversary date was the date he signed his acceptance and oath of office, not the day he was assigned to an active drilling unit. Finally, CGPC stated that "[i]f you fail to earn a minimum of 50 points for another anniversary year, in your current grade, you are subject to transfer to the Standby Reserve Inactive Status List (ISL)."

In the anniversary year ending July 1, 1999, the applicant received a total of 69 points. In a performance evaluation he received on May 31, 1999, he received good marks and his reporting officer's recommendations for retention, for promotion to LCDR, and for integration into the regular Coast Guard. However, he was not selected for promotion by the PY 2000 LCDR selection board that met in November 1999. On March 21, 2000, the applicant was notified that because he had been passed over for promotion for a second time, he would be discharged on June 30, 2000.

On June 16, 2000, the applicant was informed that under the Reserve Officer-to-Enlisted Program, he had been selected for enlistment in the Reserve as a marine science technician third class as of July 1, 2000. Thereafter, he applied for and received a direct commission as a Reserve officer and has advanced again to the rank of lieutenant. He has continued to earn satisfactory years of federal service.

The applicant's participation record in the Reserve for the relevant years appears in the tables below (as taken from his CG-4175s). The first table shows his participation arranged in accordance with a July 2nd anniversary date. The second table shows his participation arranged in accordance with an October 1st anniversary date.

| ANNIVERSARY YEAR BEGINNING JULY 2 | INACTIVE DUTY DRILLING POINTS BY MONTH |                 |                |     |                |     |     |     |     |     |     |     | Drill Pts. | Mbr-ship Pts. | ADT Pts. | Ann. Total      |                 |
|-----------------------------------|--|-----------------|----------------|-----|----------------|-----|-----|-----|-----|-----|-----|-----|------------|---------------|----------|-----------------|-----------------|
|                                   | Jul                                    | Aug             | Sep            | Oct | Nov            | Dec | Jan | Feb | Mar | Apr | May | Jun |            |               |          |                 |                 |
| 7/2/95-7/1/96                     | 4 <sup>a</sup>                         | 4 <sup>a</sup>  | 4 <sup>a</sup> | 4   | 4 <sup>b</sup> | 4   | 4   | 4   | 4   | 4   | 4   | 4   | 4          | 48            | 15       | 11 <sup>b</sup> | 71 <sup>c</sup> |
| 7/2/96-7/1/97                     | 4                                      | 4               |                |     |                |     |     |     |     |     |     |     |            | 8             | 15       | 0               | 23              |
| 7/2/97-7/1/98                     |  |                 |                |     |                | 4   | 2   | 4   | 2   | 0   | 4   | 0   |            | 16            | 15       | 0               | 31              |
| 7/2/98-7/1/99                     | 0                                      | 18 <sup>d</sup> | 6              | 4   | 4              | 0   | 4   | 4   | 0   | 0   | 2   | 0   |            | 42            | 15       | 12 <sup>d</sup> | 69              |

| ANNIVERSARY YEAR BEGINNING OCT. 1 | INACTIVE DUTY DRILLING POINTS BY MONTH |                |     |     |     |     |     |     |     |     |                 |     | Drill Pts. | Mbr-ship Pts.   | ADT Pts. | Ann. Total      |                 |
|-----------------------------------|--|----------------|-----|-----|-----|-----|-----|-----|-----|-----|-----------------|-----|------------|-----------------|----------|-----------------|-----------------|
|                                   | Oct                                    | Nov            | Dec | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug             | Sep |            |                 |          |                 |                 |
| 10/1/95-9/30/96                   | 4                                      | 4 <sup>b</sup> | 4   | 4   | 4   | 4   | 4   | 4   | 4   | 4   | 4               |     |            | 44              | 15       | 11 <sup>b</sup> | 70              |
| 10/1/96-9/30/97                   |  |                |     |     |     |     |     |     |     |     |                 |     |            | 0               | 15       | 0               | 15              |
| 10/1/97-9/30/98                   |  |                | 4   | 2   | 4   | 2   | 0   | 4   | 0   | 0   | 18 <sup>d</sup> | 6   |            | 40              | 15       | 12 <sup>d</sup> | 67              |
| 10/1/98-9/30/99                   | 4                                      | 4              | 0   | 4   | 4   | 0   | 0   | 2   | 0   |     |                 |     |            | 18 <sup>e</sup> | 15       |                 | 33 <sup>e</sup> |

Note: Monthly points shown in gray blocks are taken from Leave and Earnings Statements (LESEs) because there are no CG-4175s in the record for these years. Months during which the applicant was in the IRR and performed no drills are cross-hatched. Months for which no specific data are available are blank.

<sup>a</sup> The summary record of annual points earned shows that the applicant earned 48 inactive duty drill points during the year. Since his LESEs show that he earned 36 points during the rest of the year, he must have earned 12 during these three months.

<sup>b</sup> A January 1996 LES shows that the applicant earned his active duty for training (ADT) points from November 27 to December 2, 1995.

<sup>c</sup> In 1996 and prior years, each reservist could receive a maximum of 60 points, not including ADT points, toward retirement even if he performed more than 45 drills. Therefore, the total for this year is 71 instead of 74.

<sup>d</sup> In August 1998, the applicant also earned 12 ADT points.

<sup>e</sup> Total is likely inaccurate because no specific data are available for July, August, and September 1999.

## VIEWES OF THE COAST GUARD

On July 7, 2003, the Chief Counsel of the Coast Guard recommended that the Board deny the applicant's request. In making this recommendation, he relied on a memorandum on the case prepared by the Coast Guard Personnel Command (CGPC).

CGPC stated that the application was not timely and that the Coast Guard had complied with policy and federal law in determining that the applicant's anniversary date from 1987 to 2000 was July 2nd, because that is the day he took the oath of office in the Reserve. CGPC alleged that this date was "consistently used by personnel managers to determine Applicant's compliance with published performance standards." CGPC stated that the applicant did not have satisfactory years in 1997 and 1998 because he earned only 23 points in 1997 when he was on the IRR and needed 27 points and

because he earned only 31 points in 1998 when he had returned to active status and needed 50 points.

CGPC pointed out that in August 1997, when the applicant was notified that he had not obtained a satisfactory year of federal service for the anniversary year ending on July 2, 1997, he chose to seek a waiver rather than challenge the Coast Guard's determination of his point total or anniversary date.

CGPC alleged that in November 1998, rather than transfer the applicant to the ISL, which would have prevented him from drilling and earning satisfactory years toward retirement, the Coast Guard gave the applicant "another chance" by allowing him to remain in an active status so that he could continue to drill and earn more satisfactory years of service. CGPC stated that the applicant was in an active status as a commissioned officer in the Reserve from July 2, 1987, through June 30, 2000, but was not selected for promotion by two separate LCDR selection boards, whose deliberations in choosing the best qualified officers for promotion are confidential, as provided under the U.S. Code.

#### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On July 20, 2003, the BCMR sent the applicant a copy of the views of the Coast Guard invited him to respond within 30 days. On September 4, 2003, the applicant responded.

The applicant argued that his application was timely because he did not discover the administrative errors that devastated his career until 2002. The applicant also alleged that the Coast Guard is "disingenuous" in arguing untimeliness since it failed to modify its regulations regarding Reserve participation to comply with a 1967 statute, 10 U.S.C. 12303, until May 2003.<sup>3</sup> Moreover, he argued, even if his application was untimely, the Board should find that it is in the interest of justice to waive the statute of limitations in light of the Coast Guard's errors and changes in policy.

The applicant alleged that the Coast Guard failed to maintain his record properly in accordance with 10 U.S.C. 10204<sup>4</sup> and so should not receive the presumption of regularity that it normally receives under the Board's rules.

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<sup>3</sup> In 10 U.S.C. 12303, Congress allowed the President to order any member of the Reserve who is not participating satisfactorily to active duty for up to one year. Because there is no requirement in the statute that the President actually exercise this authority, the applicant's argument that the Coast Guard was somehow negligent and untimely in not revising its regulations earlier fails.

<sup>4</sup> Title 10 U.S.C. 10204 requires the Coast Guard to maintain personnel records for each Reserve member with the following information: physical condition, dependency status, military qualifications, civilian occupational skills, availability for service, and a record of "the number of members of each class of each reserve component who, during each fiscal year, have participated satisfactorily in active duty for

The applicant argued that the Coast Guard erred in arguing that his anniversary year was properly determined by the date he took his Oath of Office. He alleged that the anniversary year is determined by a reservist's drilling status. He alleged that the Coast Guard "did not comply with policy or law in issuing the 2 July 1987 anniversary date" because on that day he was on active duty instead of inactive duty.

The applicant alleged that the error in the form letter he received in August 1997 indicating that he would have had to earn 50 points to have a satisfactory year rather than 27 points caused him not to notice the changed anniversary date stated in the letter. He also alleged that he had actually "earned sufficient points for the year, but because of my Anniversary date change, those points were shifted to the previous year."<sup>5</sup> He also repeated his allegation that the letter was insufficient as an inducement to participate satisfactorily since it was issued after the end of the calendar year. He argued that the Coast Guard had a duty to warn him that his participation was unsatisfactory before the end of the anniversary year.

The applicant argued that his anniversary year ending in 1998 also would have been satisfactory if his anniversary date had properly remained October 1st.<sup>6</sup> He also argued that the August 1998 was just as deficient as an inducement to participate satisfactorily as the August 1997 letter because it was issued after the anniversary year was over.

The applicant alleged that CGPC's claim that he was given "another chance" in 1998 is wrong. He alleged that he "drilled satisfactorily in 1999 because I discovered the change to my Anniversary date and complied with the changed Anniversary date." He also alleged that CGPC's statement that he remained in an active status from 1987 to 2000 is clearly wrong because he received letters in 1997 and 1998 transferring him to the ISL.

## **APPLICABLE REGULATIONS**

Chapter 4.D. of the Reserve Administration and Training Manual (RATMAN), COMDTINST M1001.27A, in effect from May 14, 1991, to March 27, 1997, required offi-

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training and inactive duty training with pay." Since the Coast Guard has maintained a record of the applicant's annual participation and satisfactory years of service, the applicant's argument that the Coast Guard has violated this statute fails.

<sup>5</sup> This allegation does not bear out because, as shown in the tables above, the applicant earned insufficient points for the anniversary year ending in 1997 based on either an October 1 or July 2 anniversary date.

<sup>6</sup> This allegation is borne out in the tables above.



cers in the IRR to obtain at least 27 satisfactory federal service points per anniversary year. Members in the Selected Reserve were required to earn 50 points. The RATMAN defines an anniversary year as extending "from the date of entry or reentry to the day preceding the anniversary of entry or reentry." Chapter 9.D.4.a. of the RATMAN provided that a "reservist who finds discrepancies on CG-4175 should initiate a request, with verifying documents, to Commandant (G-RA-1) via the district commander (r)."

Chapter 4.E.1. of the RATMAN provided that an officer of the Selected Reserve who, in the opinion of his commanding officer, failed to participate satisfactorily by attending prescribed drills should be counseled. If no improvement was observed, the officer could be transferred to the IRR or his commission could be revoked. The RATMAN did not require such counseling to be document.

Chapters 4.A.2. and 4.A.6. of the Reserve Policy Manual (RPM), COMDTINST M1001.28, in effect from March 27, 1997, to May 17, 2003, required officers in either the Selected Reserve or the IRR to obtain at least 50 satisfactory federal service points per anniversary year. The RPM defines the anniversary date as "the date the member entered into active service or into active status in a Reserve component."

Chapter 4.B.1 of the RPM required commands to "monitor member participation and evaluate performance of prescribed training requirements to determine compliance with the [performance and participation requirements]. Every effort shall be made to correct performance deficiencies by timely counseling of members who are not participating satisfactorily. Commands shall document all counseling in accordance with Preparation and Submission of Administrative Remarks (CG-3307), COMDTINST 1000.14 (series), and enclosure (6) to Personnel Pay and Procedures Manual, HRSIC-INST M1000.2 (series). Counseling for unexcused IDT drill absences shall start with the first absence."

Chapter 1.C.3. of the RPM states that reservists on the ISL may be ordered to active duty in time of war or national emergency but "may not train for pay or retirement points, are not eligible for promotion, and do not accrue credit for qualifying years of service for retirement."

Title 14 U.S.C. § 740 provides that officers who have been passed over for selection to the next rank by two selection boards shall be discharged.

## **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 pursuant to the provisions of 10 U.S.C. § 1552.

2. An application to the Board must be filed within three years of the day the applicant discovers the alleged error in his record that he wants corrected. 10 U.S.C. § 1552(b). Although the applicant alleged that he discovered certain administrative errors by the Coast Guard in 2002, he has known that he was deemed not to have earned satisfactory years of service toward retirement in 1997 and 1998—the alleged error in his record—since August 1998. Therefore, his application was untimely.

3. The Board may waive the three-year statute of limitations if it is in the interest of justice to do so. 10 U.S.C. § 1552(b). To determine whether it is in the interest of justice to waive the statute of limitations, the Board should consider the reasons for the delay and conduct a cursory review of the merits of the case.<sup>7</sup> The applicant alleged that he was not aware of certain administrative errors by the Coast Guard until recently. The record contains evidence of administrative errors by the Coast Guard that could not easily have been discovered by the applicant. In addition, the record contains several CG-4175s from the early 1990s showing his anniversary date as October 1 instead of July 2. Accordingly, the Board finds that it is in the interest of justice to waive the statute of limitations in this case.

4. The applicant alleged that in 1996 the Coast Guard arbitrarily changed his anniversary date from October 1 to July 2. The RATMAN defined an anniversary year as extending “from the date of entry or reentry to the day preceding the anniversary of entry or reentry.” The record indicates that the applicant entered the Selected Reserve on July 2, 1987. There is no contrary evidence in the record. The more specific definition under the RPM in effect after March 1997—“the date the member entered into active service or into active status in a Reserve component”—does not affect this determination since the applicant clearly entered active status in a Reserve component (the SELRES) on July 2, 1987. Therefore, the Board finds that the applicant’s proper anniversary date from 1987 until his separation from the Reserve officer corps on June 30, 2000, was July 2.

5. The record contains several CG-4175s showing that in the early 1990s, the Coast Guard erroneously recorded the applicant’s anniversary date as October 1. However, a “Computation of Retirement Credit Points” dated June 15, 1992, in the applicant’s record shows that he was told that he had satisfactorily participated in the Reserve in the anniversary year from July 2, 1990, through July 1, 1991, by earning 72 points. However, in light of the erroneous CG-4175s provided annually to the appli-

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<sup>7</sup> *Dickson v. Secretary of Defense*, 68 F.3d 1396, 1405 (D.C. Cir. 1995); *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

cant, the Board finds that in the early 1990s he could reasonably have been misled to believe that his anniversary date was October 1.

6. On August 25, 1997, the Coast Guard notified the applicant that he had earned only 23 points during the anniversary year that ended on July 2, 1997, which was insufficient for a satisfactory year toward retirement. In this letter, the Coast Guard erroneously used the new requirement of 50 points for members on the IRR under the RPM, whereas the RATMAN standard of 27 points actually applied since the applicant's anniversary year had begun while the old manual was in effect. The applicant alleged that the Coast Guard's error in citing the point requirement caused him not to notice the July 2 anniversary date cited in the letter. However, the applicant's annual point total—23—met neither requirement. Therefore, the Board is not persuaded that the Coast Guard's error could have prevented the applicant from challenging the determination that the year was unsatisfactory if he actually believed that it was satisfactory. Nor is the Board persuaded that the applicant could have failed to notice the July 2 anniversary date since the letter arrived in August 1997, prior to October 1, which is the date the applicant alleges that he reasonably believed to be his anniversary date. Assuming that he believed his anniversary year to be ending on October 1, he could not have failed to notice that he was receiving a letter announcing that the anniversary year had been unsatisfactory one month before he expected it to end. Therefore, the Board finds that as of August 1997, the applicant was on notice that his anniversary date was July 2.

7. The applicant alleged that if the Coast Guard had applied the anniversary date that it misled him to believe was correct—October 1—he would have earned a satisfactory year of service for the anniversary year ending in 1997. However, the record indicates that from October 1, 1996, to September 30, 1997, the applicant was in the IRR and performed no drills at all, earning only the 15 points every reservist receives for membership annually. Therefore, the applicant has not proved that the Coast Guard's error in issuing him CG-4175s with the October 1 anniversary date caused him to receive an unsatisfactory year for retirement purposes in 1997. Furthermore, the Board notes that in failing to challenge his point total in 1997 and requesting a waiver instead, the applicant may be deemed to have accepted the Coast Guard's determination regarding his unsatisfactory year and anniversary date as accurate. The applicant has not proved by a preponderance of the evidence that his failure to receive a satisfactory year of service in 1997 was either an error or injustice.

8. The applicant alleged that the discrepancy in his anniversary date also caused him to receive an unsatisfactory year in 1998. From July 2, 1997, to July 1, 1998, he earned only 31 points, whereas 50 were required since he had chosen to return to the SELRES from the IRR. It is true that if his anniversary year were calculated from October 1, 1997, to September 30, 1998, the applicant would have earned 67 points, which would have been more than sufficient for a satisfactory year. However, the Board has

found that the applicant was on notice that his anniversary date was July 2 as of August 1997, before he left the IRR. Therefore, the Board finds that upon rejoining the SELRES in November 1997, the applicant knew or should have known that his anniversary date was July 2 and that he would have to earn 50 points before July 1, 1998, to have another a satisfactory year of federal service entered in his record. Furthermore, the Board notes that in failing to challenge his point total timely in August 1998, the applicant may be deemed to have accepted the Coast Guard's determination regarding his unsatisfactory year and anniversary date as accurate. The applicant has not proved by a preponderance of the evidence that his failure to receive a satisfactory year of service in 1998 was either an error or injustice.

9. The applicant alleged that when his record was reviewed by LCDR selection boards in 1997 and 1998, it erroneously showed him to be on the ISL. However, the applicant did not fail of selection for promotion in 1997. He was passed over for promotion to LCDR in 1998 and 1999 by the promotion year (PY) 1999 and 2000 selection boards, respectively. Although the applicant was sent a letter in 1997 announcing his pending transfer to the ISL on November 15, 1997, his transfer to the ISL was canceled on November 7, 1997, before it went into effect. Therefore, there is no evidence in the record that when the applicant's record was reviewed by the LCDR selection board from October 26 to November 4, 1998, it erroneously indicated that he was on the ISL.

10. The Coast Guard sent the applicant another letter announcing his transfer to the ISL on November 10, 1998, following his second year of unsatisfactory participation. Although the Coast Guard allowed the applicant to continue drilling so that he could earn a satisfactory year, the record indicates that the November 10, 1998, letter was not actually canceled until May 11, 1999. Therefore, it is possible that during that six-month period his record erroneously indicated he was in the ISL. However, since the November 10, 1998, letter was canceled on May 1, 1999; since he continued to drill in an active status during those months; and since he received a satisfactory year of service for the anniversary year ending on July 1, 1999, the record does not support his allegation that when he was considered for promotion to LCDR a second time in November 1999, the selection board erroneously believed he was on the ISL. Therefore, the applicant has failed to prove that his record contained erroneous information in his record about his status in the SELRES when he was passed over for promotion in 1998 and 1999. In addition, in light of findings 7 and 8 above, he has failed to prove that his record contained erroneous information about his level of participation in 1997 and 1998 when the selection boards reviewed it.

11. The applicant alleged that the letters he received in August 1997 and August 1998 were the only attempts by the Coast Guard to induce his participation in the Reserve and that, because they arrived after the anniversary years had ended, they were insufficient to meet the requirements of the RPM and the RATMAN. He submit-

ted a statement from a retired Reserve captain who indicated that his practice was to counsel reservists about their unsatisfactory participation and to document that counseling in their records. While both the RATMAN and the RPM required commands to attempt to induce participation, the applicant has submitted no evidence to support his allegation that no one in the Coast Guard made any attempt to induce his participation during those two years. The lack of an administrative entry documenting such counseling in the applicant's record does not persuade the Board that no one informed the applicant of the requirement to earn points during those years. Moreover, the applicant was an officer, not an enlisted member, and was responsible for knowing the requirements and meeting them. Documentation of efforts to induce participation was not required under the RATMAN, and Chapter 4.B.1. of the RPM required documentation only of performance problems or unexcused absences from drills, not of efforts to encourage participation.<sup>8</sup> While it might be difficult for the applicant to prove that no one ever told him about the point requirements and what measures he needed to take to meet them while he was in the IRR in 1997 and after he rejoined the SELRES in 1998, the difficulty of finding proof does not relieve an applicant of the burden of proof. Absent strong evidence to the contrary, the Board presumes that Coast Guard officials have performed their duties lawfully, correctly, and in good faith.<sup>9</sup>

12. Accordingly, the applicant's request should be denied.

**[ORDER AND SIGNATURES ON FOLLOWING PAGE]**

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<sup>8</sup> There is no evidence in the record that the applicant's command was unhappy with his performance or that he had any unexcused absences from drills in anniversary years 1997 and 1998.

<sup>9</sup> 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).

**ORDER**

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCGR, for correction of his military record is denied.

