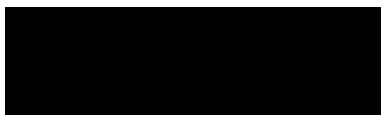


**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2013-094



FINAL DECISION

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 Chair docketed the application after receiving the applicant's completed application on April 10, 2013, and subsequently assigned it to [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated January 23, 2014, is 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 civilian employee of [REDACTED] who retired from the Coast Guard Reserve as a [REDACTED], asked the Board to correct his record to show that he performed certain periods of inactive duty training (IDT), active duty training (ADT), and readiness management period (RMP) while assigned to Coast Guard Headquarters. He alleged that after he retired, the Coast Guard erroneously erased these periods of duty from his record, costing him pay and points. Thereafter, the Pay and Personnel Center (PPC) erroneously claimed that he never performed the drills and required him to pay \$3,872.02. The applicant paid the bill to avoid being charged interest or have his credit ruined. He asked the Board to refund him the \$3,872.02 and to pay him interest¹ as well.

Specifically, the applicant stated that he performed the following periods of Reserve duty and regularly entered them in the system through his unit's yeoman at the close of business each day:

- IDT on December 27, 28, 29, and 30, 2010, and January 14, 18, and 21, 2011, by studying "mandatory IS/E-PME";
- IDT on Jan 13 and 19, 2011, by taking mandatory training in MS Powerpoint and Advanced Outlook through [REDACTED];
- ADT on February 19, 20, and 21, 2011, pursuant to orders; and

¹ The Board is not authorized to award interest to an applicant except in particular circumstances involving court-martial convictions that have been set aside. 10 U.S.C. § 1552(c)(4).

- RMP for the mandatory annual weigh-in on April 28, 2011.

The applicant submitted a page on which he listed and asked to be paid for these periods. The list is not on letterhead and is written in the first person but bears the signature of the Deputy Chief of the Coast Guard [REDACTED] at the bottom, although there is no statement that the Deputy Chief had actual knowledge of the periods in question. The applicant also submitted the following documents:

- a) [REDACTED] "Memorandum for Record" states that the applicant attended Powerpoint training on January 13, 2011.
- b) An email the applicant forwarded from his Coast Guard email address to [REDACTED] civilian address on the morning of Friday, January 14, 2011, concerns the calculation of his Reserve anniversary date.
- c) An email from [REDACTED] trainer to the applicant states that the applicant attended 8 hours of Advanced Outlook training on January 19, 2011.
- d) A Reserve Retirement Point Statement was printed from the Coast Guard database on January 21, 2011. The applicant stated that he asked a yeoman to print it for him while he was performing IDT that day.
- e) Orders issued on December 30, 2010, and signed by a first class yeoman on January 7, 2011, require the applicant to perform ADT-AT (ADT for annual training) from February 10 to 21, 2011, to satisfy the 12-day annual training requirement for fiscal year 2011. The applicant stated that he was asked to schedule his ADT in the [REDACTED] at this time because of the [REDACTED]. Three of the days fell on a long weekend, and he was originally told he could come in those days to work on the [REDACTED]. He was available and willing to work those three days, and at close of business on February 28, 2011, he was "told not to worry about it," even though those days were later deducted.
- f) An email dated April 28, 2011, from one yeoman to another states that the applicant had been weighed that day and was within the Coast Guard's weight standards. The completed weigh-in form bears the same date. The applicant was paid for RMP for this date but it was later recouped.
- g) A Page 7² dated June 20, 2011, and signed by the commanding officer of the [REDACTED], counseled the applicant that he needed to refresh his skills, that his supervisor had noticed that he had performed numerous unauthorized IDT drills and RMPs in December 2010 and January 2011, and that an investigation had been initiated. The Page 7 noted that the Reserve Policy Manual requires all IDT and ADT to be scheduled and authorized in writing through one's supervisor and that verbal orders issued in emergency or time-critical situations would be confirmed with written orders.
- h) A Notice of Overpayment from PPC to the applicant dated August 11, 2011, states that he had been overpaid \$3,826.69, and that the sum would be deducted incrementally from his future pay.

² U.S. Coast Guard, CG-3307, Administrative Remarks (Performance and Discipline; General-Negative) (June 20, 2011).

- i) An email from a second class yeoman at PPC dated September 19, 2011, states that the debt had been created because he had been paid for IDT and ADT that he had not performed in December 2010 and January and February 2011.
- j) A letter dated October 27, 2011, from the commanding officer of PPC to the applicant states that a review of his pay account following his retirement had shown a total overpayment of \$3,873.02, including \$3,826.69 in pay and allowances he received but was not entitled to for IDT on December 27-30, 2010, and January 13-14, 18-19, and 21, 2011, and ADT-AT on February 19-21, 2011, and \$46.33 for non-payment of life insurance premiums, which the applicant did not specifically address.

VIEWS OF THE COAST GUARD

On September 19, 2013, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request.

The JAG stated that under the Reserve Policy Manual (RPM) and the Pay and Personnel Procedures Manual (PPPM), unless authorized in writing by the Commandant, reservists are limited to 48 paid IDT drills and between 12 and 14 days of ADT per fiscal year. Reservists' orders for ADT, IDT, and RMP must be issued in advance in writing. Verbal orders to report for duty may be issued in time-critical or emergency situations but must be followed up with written orders as soon as possible.

The JAG stated that on his September 2010 personnel evaluation, the applicant received a mark of "not recommended" for advancement and was told that he should use his IDT and ADT to improve his skills. He "requested and was properly approved for drills performed on November 4 & 18, 2010, and December 2, 9 & 20, 2010."

In January and February 2011, a Reserve Training Funds Management Officer, ██████ reported irregularities in the applicant's IDT account and excessive numbers of RMPs used. He also noticed that the applicant's 12 days of ADT-AT were unusually scheduled to include two weekend periods and one holiday, as it ran from Thursday, February 10, through Monday, February 21, 2010, instead of the usual 10 weekdays and one weekend. Upon inquiry, it was discovered that the applicant's supervisor was unaware of the ADT-AT orders and that there was no special project that would warrant having the applicant perform ADT during a 12-day period when there were just 7 regular work days and 5 holiday and weekend days. In addition, the applicant told ██████ that he was performing drills and stopping by a yeoman's desk to get the drills entered and approved when he left at the end of the day.

On February 10, 2011, the JAG stated, the applicant advised his supervisor that he had already exhausted his annual authorized limit of 48 IDT drills, even though the supervisor had only authorized a few drills since the start of the fiscal year and had authorized only one drill to be performed online at home. In particular, the supervisor had not approved IDT for the applicant on December 29-30, 2010, either in advance or after-the-fact.

The JAG stated that the command began an investigation after learning that the applicant had used an excessive number of RMPs, received orders for an unusual ADT duty period not approved by his supervisor, and was performing IDT without proper supervisory authority. The

investigation was terminated, however, when the applicant applied for and was granted retirement.

The JAG admitted that the email from the yeoman at PPC dated September 19, 2011 ((i) on pages 2-3), who wrote that the pay was being recouped because the applicant had not performed the drills, should also have stated, to be complete and accurate, that the applicant had not been authorized to perform the drills. However, the fact that the yeoman did not include in his explanation of the recoupment the fact that the applicant had not been authorized to perform some of the drills does not negate the fact that the drills were unauthorized.

The JAG stated that the fact that the applicant's ADT-AT orders were issued on December 30, 2010, and the fact that the Retirement Points Statement was printed on January 21, 2011 ((d) and (e) on page 2) do not prove either that the applicant performed drills on those dates or that he was authorized to perform drills on those dates. Nor does the fact that he forwarded an email from his Coast Guard email address to [REDACTED] email address ((b) on page 2) prove that he was authorized to perform or did perform drills on that day. Similarly, the JAG stated, that the documentation showing that he completed PowerPoint and Advanced Outlook training through [REDACTED] on January 13 and 19, 2011, respectively, does not prove that he was authorized to drill on those dates or even that he was on leave from his civilian job with [REDACTED] on those dates.

Regarding the RMP for the weigh-in on April 28, 2011, the JAG stated that the applicant did not show up for the drill date on which the semiannual weigh-in was scheduled and got weighed delinquent on April 28, 2011, but there is no evidence to support that he was authorized an RMP for that date. The JAG noted that the applicant had previously excessively claimed 19 RMPs for personnel and medical visits in FY 2011, even though the clinic's records showed that he had not visited the clinic since 2009. The applicant's pay for those RMPs was recouped and he did not contest that recoupment.

Regarding the ADT-AT, the JAG stated that the applicant's orders were amended because the applicant's supervisor had not authorized him to perform ADT-AT over the long holiday weekend from February 19 to 20, 2011; there was insufficient work for him to perform; and he himself did not want to work over the long weekend.

The JAG noted that the applicant submitted no evidence at all to support his claim that he performed drills from December 27 to 29, 2010, or on January 18, 2011.

The JAG concluded that the applicant's Reserve duty was properly accounted for and credited to his account and that the applicant failed to prove by a preponderance of the evidence that he was authorized to perform or actually performed the IDT, ADT, and RMP he claims. Therefore, the JAG recommended that the Board deny relief. In support of this recommendation, he submitted the following documents:

- ALCOAST 640/09, issued on November 9, 2009, states that readiness management periods (RMPs) are used only for specific, authorized purposes, including reservists' physical and dental examinations and weigh-ins. RMPs may be paid or unpaid, and commanding officers may authorize a maximum of 30 RMPs per reservist per fiscal year. Each RMP

must be at least three hours in duration, and “[i]f a scheduled dental, medical, or RSWE does not meet the minimum three hours duration the unit should assign other appropriate duties to fulfill the requirement.” RMPs may not be scheduled on the same days as IDT or ADT.

- An email dated October 20, 2010, sent to all Coast Guard commands with the subject line, “FY11 Reserve Readiness Management Period (RMP) Guidance,” states that during the continuing resolution period (which ended on April 15, 2011), RMPs were authorized only for physical examinations, dental examinations, servicewide examinations, and unit all-hands meetings, and the number of RMPs each reservist could have for each of these four purposes was limited to one—providing a maximum of four—unless the reservist was authorized more for medical treatment of a disability or weight probationary period.
- An email sent from a [REDACTED] at the Reserve Force Readiness Command to [REDACTED] the Reserve Training Funds Management Officer, dated January 13, 2011, asks [REDACTED] to “look into [the applicant] too, he has used 11 RMPs and I am not sure any of them are proper and he only has 10 days of IDT left if we have to convert RMPs to IDTs.”
- Another email from the [REDACTED] to [REDACTED] dated February 11, 2011, and bearing the subject line “Suspected RMP Abuse,” asks [REDACTED] to figure out why the applicant had completed 17 RMPs already in FY 2011. The [REDACTED] noted that the applicant had also already completed all of his authorized IDT drills for the year and was currently completing his ADT-AT. Database printouts show that the applicant had claimed RMPs for visits to health services on October 5 and 9, 2010; personnel on October 10, 2010; a physical examination on October 14, 2010; admin/individual readiness on October 18, 26, and 27, 2010; a weigh-in on October 22, 2010; a medical appointment on November 8, 2010; more visits to health services on November 22 and 29 and December 6, 2010; personnel on January 1, 2, and 4, 2011; a medical appointment on January 3, 2011; and personnel on January 8 and 9, 2011.
- An email sent at 8:37 a.m. on February 14, 2011, from [REDACTED] to the applicant’s command asking for the name of the applicant’s active duty supervisor. [REDACTED] forwarded this email to an investigator on March 29, 2011, and stated that after sending the email, he received a call from the applicant.
- An email sent at 10:11 a.m. on February 14, 2011, from [REDACTED] to the applicant thanks the applicant for his candidness that morning and states that the applicant’s IDT meal entries would be changed to lunch only and that 6 of his 10 RMPs would be changed from paid to non-paid. [REDACTED] wrote that making those changes would likely prevent an audit of the applicant’s drills and pay. The applicant replied, thanking [REDACTED] for his help and saying, “I owe you big time.”
- An email sent at 11:17 a.m. on February 14, 2011, from [REDACTED] to the chief yeoman serving as the Servicing Personnel Officer (SPO) at the Coast Guard Headquarters Personnel Services and Support Unit (PSSU), dated February 14, 2011, states that the applicant was “already drilled out” for the fiscal year, had 10 paid RMPs in the system, which was above the authorized limit, and had been paid for all meals on his drill days instead of just

lunch. ██████ stated that he would correct the meals and change the applicant's excess RMPs from paid to non-paid so that he would still be entitled to points for those RMPs.

- In an email dated February 16, 2011, the ██████ at the Coast Guard Headquarters Clinic advised the applicant's supervisor that the applicant "has no documented visits to the HQ Clinic since 2009. He currently needs his flu vaccine, dental exam and HIV drawn to get in the green for readiness."
- A letter from the applicant's supervisor in the ██████, dated March 21, 2011, states that the supervisor had recently become aware that the applicant had "been getting unauthorized drills signed off by CG Headquarters PSSU." A chief petty officer at the PSSU had asked the supervisor why the applicant "was bothering her yeomen to get drills signed off." When the supervisor discussed the matter with the applicant, the applicant told him he had completed all of his IDT for the year, but the supervisor "hadn't seen him in on many drills and he hadn't gotten my authorization to do any further drills." The supervisor stated that he had authorized the applicant to drill on November 4 and 18, 2010, and December 2, 9, and 20, 2010, and those were the only IDT drills for which the applicant had requested his approval. The supervisor had PSSU approve those drills in the database because the supervisor did not yet have approval authority in the database but finally got authority at the end of the year. The applicant also sent the supervisor a request to drill on December 29-30, 2010, but the supervisor did not enter it in the database and upon inquiry afterward was told that the applicant had not appeared in the office those days. Regarding the applicant's claim that he drilled by studying at home, the supervisor stated that he approved only one drill period at home for the applicant to take ISC online courses. Regarding the applicant's ADT-AT schedule, the supervisor stated that he had agreed for it to be scheduled in mid February because of the State of the Coast Guard address. "When confronted about having to work over the 3-day weekend, [the applicant] was not happy. I had planned on coming in to supervise and work with him, but [the PSSU] had his orders amended to end on Friday." The supervisor concluded that the applicant had "demonstrated a severe lack of confidence in doing his job, a skill level of a ██████, and an unethical motivation to get all of his IDT drills done under the radar so we can't bring him in for training. He also thought he was going to get both weekends off during his ADT, which is unsatisfactory and behavior unbecoming of a Chief Petty Officer." The supervisor recommended retiring the applicant instead of recertifying him as a chief petty officer.
- An email from ██████ dated March 29, 2011, states that on January 13, 2011, he learned that the applicant was using an excessive number of RMPs and had only 10 remaining drill periods for FY 2011. He left a voicemail message for the ██████ asking about the excessive drills and noting the restrictions on RMP usage but received no call back. On February 11, 2011, he learned that the applicant had used more RMPs, totaling 17, even though the maximum authorized per reservist was then 4. He reviewed the applicant's RMPs and discovered that most were "inappropriate." He called the ██████ again and received a call back from the applicant. ██████ told the applicant he could not approve the applicant's RMPs and had been incorrectly paid for certain meals. ██████ told the applicant he was "on the radar" for RMP abuse and would be until ██████ corrected the RMPs. The applicant called him back several times over the next

two days to make sure [REDACTED] had corrected his RMPs so that he would be “off the radar.” The applicant told him that he was performing drills and having a yeoman in the PSSU approve them in the database. [REDACTED] concluded that the applicant’s chain of command had not authorized and was likely unaware of these drills. In reviewing the applicant’s record, [REDACTED] also noted that instead of starting on a Monday and including only one weekend, as is normal, the applicant’s 12-day annual training ADT was to begin on a Thursday and include only 7 workdays and 5 weekend and holiday days. Upon inquiry, he learned that no one within the [REDACTED] had authorized the ADT orders, and there was no special project that would require the odd timing. The applicant himself named no special project and said only that his command wanted him to improve his skills with training. Therefore, [REDACTED] instructed the PSSU to cancel the orders as of Friday, February 18, and advise the applicant’s supervisor in the [REDACTED] of his decision. [REDACTED] concluded that for the remainder of the fiscal year, the only duty the applicant could perform—because of the restrictions and because he has already used the maximum authorized number of IDT drills and RMPs—was 4 remaining ADT days.

- An email from [REDACTED] to an investigator dated April 5, 2011, notes that RMPs were still limited to 4 per reservist and could be used only for the specific purposes stated in the guidance dated October 20, 2010. Because unit weigh-ins normally occurred on the same day as an all-hands meeting, which together could total more than 3 hours, an all-hands and weigh-in together would warrant an RMP. However, weighing in on a day when there was no all-hands would not warrant an RMP. [REDACTED] noted that a reservist could also weigh in on an IDT drill day but would be credited with the drill, not an RMP.
- Email correspondence shows that the applicant submitted a retirement request on April 22, 2011, and that his commanding officer initially refused to consider it until the investigation into the applicant’s conduct with regard to his duty schedule was completed and was advised by the Office of Military Justice to allow the investigator to complete his work before deciding whether the applicant could retire.
- A database entry shows that the applicant claimed an RMP for a 4-hour weigh-in on April 28, 2011.
- An email dated September 25, 2012, forwards the email that the applicant received from a yeoman on September 19, 2011, claiming that the debt stemmed from drills the applicant had not performed, and notes that the drills had been performed but erroneously and without authorization, and the applicant had been counseled about being paid for unauthorized drills.
- A request for retirement submitted by the applicant on June 8, 2011, shows that the applicant asked to retire as of August 1, 2011, and his retirement orders show that he was transferred to the Retired Reserve on October 1, 2011.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 20, 2013, the applicant responded to the views of the Coast Guard and disagreed with them. He repeated his allegations that he had performed drills on the days for which

his drill pay was recouped and that a yeoman had approved them in the system for him. He also asked to be paid and credited for ADT from February 19 to 21, 2011, because he had been asked to schedule his annual training “around this time” because of the [REDACTED] [REDACTED] [REDACTED] and he was available and willing to work during that long weekend. He was told he could work on the [REDACTED] [REDACTED]. On February 28, 2011, however, he was told “not to worry about it,” even though the days were later deducted.

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. The application was timely filed within three years of the applicant’s discovery of the error in his record.³

2. The applicant asked the Board to order the Coast Guard to refund to him money for pay that he alleged was erroneously and unjustly recouped from him for several disputed periods of IDT, RMP, and ADT. When considering such allegations of error or injustice, the Board begins its analysis 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.⁴ Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”⁵

3. Regarding the recouped IDT drill pay, the applicant claimed that he performed the disputed drills and had a yeoman in the PSSU enter them in the system at the end of the day. He did not claim or show that his supervisor or someone else in his chain of command authorized the disputed IDT drills, as they had done for his IDT drills in the fall of 2010. Nor did he show that they assigned him work to do or exchanged work-related emails with him on those days. His supervisor stated that he did not authorize the disputed drills and was unaware of them. Although the drill pay was recouped, the command apparently allowed him to retain the points for those drills, which is not inconsistent since members may drill for only points instead of points and pay.⁶ By longstanding regulation, IDT drills must be authorized in advance in writing except in emergency situations.⁷ The Board finds that the applicant has not proved by a preponderance of the evidence that the recoupment of the IDT drill pay was erroneous or unjust.

4. Regarding the recouped ADT pay for the period February 19 to 21, 2011, the applicant did not claim that he actually performed active duty on those three days but only that he had orders to do so and was available and willing to do so. The applicant’s supervisor stated

³ 10 U.S.C. § 1552(b).

⁴ 33 C.F.R. § 52.24(b).

⁵ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁶ U.S. Coast Guard, Reserve Policy Manual, Chap., 2.A.2.

⁷ *Id.* at Chap. 2.B.1.a.

that he had agreed that the applicant's ADT should be scheduled around the time of the [REDACTED], but had not authorized the ADT orders for the period Thursday, February 10, through Monday, February 21, 2011. According to the supervisor, when he learned that the applicant's ADT orders—apparently issued by a yeoman not in the applicant's chain of command—included the 3-day holiday weekend of February 19 to 21, 2011, he decided to be present and supervise the applicant's drills by working with him on the [REDACTED], but the applicant did not want to work through the weekend. The record shows that [REDACTED] the Reserve Training Funds Management Officer, terminated the orders early upon learning that the orders had not been properly processed and authorized through the chain of command and that there was no special work that would justify having the applicant's annual training period include the long holiday weekend. Reservists must submit requests for ADT orders through their chain of command.⁸ After the orders were terminated, the applicant did not perform ADT during the three days in question, and so the pay he received for those three days was recouped. The Board finds that the applicant has not proved by a preponderance of the evidence that the recoupment of the ADT pay for the period February 19 to 20, 2011, was erroneous or unjust.

5. Regarding the RMP pay for the applicant's weigh-in on Thursday, April 28, 2011, the Board finds that the preponderance of the evidence shows that he did get weighed on that day. Being weighed, however, does not *per se* justify an RMP because RMPs must last at least three hours.⁹ According to the Coast Guard, unit weigh-ins are normally scheduled for the same day as an all-hands meeting. Together the all-hands and the weigh-in can take three hours, and so reservists can claim one RMP for that day. However, according to the JAG, the applicant's weigh-in on April 28, 2011, was "delinquent"—i.e., it did not occur on the day of the all-hands meeting and unit weigh-in. Although the applicant entered four hours for the weigh-in in the database, the Board is not persuaded that his command erred by concluding that his weigh-in on April 28, 2011, did not last three hours and did not meet the requirements for an RMP. In making this finding, the Board takes into account the fact that the applicant had previously erroneously claimed several RMPs for medical appointments even though the clinic had no record of him visiting since 2009.

6. The Board notes that \$46.33 of the \$3,872.02 debt that the applicant disputes was for an unpaid insurance premium. The applicant did not dispute the premium or present evidence about it. Therefore, the Board will not address it.

7. Accordingly, the applicant's request should be denied because he has failed to prove by a preponderance of the evidence that the debt for the IDT drills, ADT that was not actually performed, or RMP for being weighed on April 28, 2011, was erroneous or unjust.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

⁸ *Id.* at Chap. 3.B.1(1).

⁹ *Id.* at Chap. 2.A f(c).

ORDER

The application of
record is denied.



USCGR (Retired), for correction of his military

January 23, 2014

