

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-066



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. Upon receiving the completed application on February 20, 2014, the Chair docketed the case and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated July 16, 2014, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant, a [REDACTED] in the Reserve, asked the Board to correct his record to show that the period between his discharge from active duty on June 30, 1995, and his acceptance of a commission in the Reserve on March 8, 1996, was not time during which he was affiliated with the Coast Guard or Coast Guard Reserve. The applicant explained that he was discharged on June 30, 1995, because he had been passed over for promotion twice. He had already served on active duty for about 12 years and had no remaining military obligation. Therefore, he was not affiliated with the Coast Guard or Reserve in any way until he accepted a commission as a Reserve officer on March 8, 1996. In July 2012, however, a yeoman prepared a Statement of Creditable Service (SOCS) for him, which erroneously shows that he was a member of the Reserve from July 1, 1995, through March 7, 1996. The applicant stated that the SOCS is incorrect and is adversely affecting his retirement date and his future retired pay because he has been selected for promotion to captain but will not likely be promoted or be able to complete his current assignment if the error on the SOCS is not corrected.

The applicant stated that the SOCS is also incorrect in that it shows that he remained a member of the Individual Ready Reserve (IRR) until May 31, 1997, when in fact, he was assigned to the Selected Reserve (SELRES) on September 1, 1996, and has drilled regularly as a SELRES member since that date.

In support of his allegations, the applicant submitted the following documents:

- An SOCS dated July 18, 2012, indicates that the applicant was discharged from active duty on June 30, 1995; was a member of the IRR from July 1, 1995, through May 31, 1997; and has been a member of the SELRES since then.
- The applicant's DD 214, shows that he was discharged (not released into the Reserve) on June 30, 1995, and had no remaining military service obligation on that date.
- A letter dated February 28, 1996, states that his request for a Reserve commission had been approved and that he should accept the appointment by executing an Acceptance and Oath of Office within 60 days.
- The applicant's Acceptance and Oath of Office for his Reserve commission was executed on March 8, 1996.
- The applicant's performance evaluation for the period March 8 through August 31, 1996, shows that he did not perform any drills during that period.
- Orders show that the applicant was assigned to a unit in pay category H (which is a pay category of the IRR)¹ as of September 1, 1996.
- The applicant's annual Reserve Points Statement and biannual performance evaluation show that he began drilling regularly in September 1996.

VIEWS OF THE COAST GUARD

On May 21, 2014, the Coast Guard submitted an advisory opinion and recommended granting the applicant's request in part.

The Coast Guard agreed that the applicant was not affiliated with the Coast Guard or Reserve from July 1, 1995, through March 7, 1996, because he was discharged on June 30, 1995, and accepted his Reserve commission on March 8, 1996. Therefore, his military records, including his SOCS and Reserve Points Statement should be corrected to reflect his lack of membership during this period. The Coast Guard stated that the correct code in the database for his discharge is "TER/DSC," but the database currently erroneously reflects "XFR/PCS." In addition, his acceptance of his Reserve commission on March 8, 1996, should be coded as "REH/REH" instead of "XFR/PCS."

The Coast Guard stated, however, that the applicant began drilling in September 1996 as a member of the IRR and was not assigned to a paid billet in the SELRES until June 1, 1997. The Coast Guard submitted a print-out from its database reflecting this reassignment from the IRR to the SELRES on June 1, 1997. Therefore, the Coast Guard argued, his record properly reflects that he was assigned to the IRR through May 31, 1997.

¹ According to Chapter 1.D.5. of the Reserve Administration and Training Manual (RATMAN) in effect in 1996, pay category H is for certain members of the IRR only.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 30, 2014, the applicant responded to the Coast Guard's advisory opinion and agreed with the recommendation for relief. Upon further inquiry from the Chair, the applicant stated that he once questioned why the Reserve was using October 23rd as his anniversary date and was assured that October 23rd was his correct anniversary date based on his original enlistment on active duty in October 1983.

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 issuance of the erroneous SOCS.

2. The applicant alleged that the Coast Guard has incorrectly recorded and/or categorized periods of his military service. When considering allegations of error and 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.² 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."³

3. The Board finds that the applicant has proven by a preponderance of the evidence that he was not a member of the regular Coast Guard or Reserve from July 1, 1995, through March 7, 1996, and that his record incorrectly shows that he was in the IRR during this period. The records clearly show that the applicant had no remaining military service obligation when he was discharged on June 30, 1995, and that he did not accept a Reserve commission until March 8, 1996. Therefore, his military records, including his Reserve Points Statement and SOCS, should be corrected to reflect his lack of membership during this period.

4. The applicant alleged that he was assigned to the SELRES and began drilling regularly on September 1, 1996, but that his record erroneously shows that he remained in the IRR until May 31, 1997. The applicant's points statement and performance evaluation show that he did begin drilling regularly in September 1996. However, his orders show that he was drilling as a member of the IRR, in pay category H, until June 1, 1997, when he was assigned to a paid billet in the SELRES.

5. Accordingly, the relief recommended by the Coast Guard should be granted. The Board notes, however, that the recommended relief will also change the applicant's Reserve anniversary date from October 23rd of each year to March 8th.⁴ This change could adversely

² 33 C.F.R. § 52.24(b).

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁴ Chapter 1.E. of 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."

affect the calculation of the number of qualifying years of satisfactory service and of satisfactory participation he is credited with because a satisfactory year for retirement purposes requires a reservist to earn at least 50 points per anniversary year,⁵ but drills are not always distributed evenly throughout each year, and because satisfactory participation in the SELRES also requires the reservist to perform at least 12 days of active duty per anniversary year,⁶ but the annual training period is not always scheduled for the same time each year. Therefore, because the Coast Guard's long-term miscalculation of his anniversary date should not result in the applicant losing years of satisfactory service or participation, the Board will also order the Coast Guard to adjust the dates of his drill points and waive annual training requirements as needed to ensure that he is credited with the same number of years of satisfactory participation and qualifying years of satisfactory service for retirement purposes with his new anniversary date that he had when his anniversary was October 23rd.

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⁵ Chapters 4.B.1 k. and 8.E.4. of the Reserve Policy Manual (RPM), COMDTINST M1001.28B, require Reserve officers to obtain at least 50 points per anniversary year to be credited with a satisfactory participation and a satisfactory year of service for retirement purposes.

⁶ RPM, Chapter 4.B.1.d.

ORDER

The application of [REDACTED], USCGR, for correction of his military record is granted as follows:

The Coast Guard shall correct his military records, including his SOCS and Reserve Points Statement, to reflect the fact that he was discharged from the regular Coast Guard (TER/DSC) on June 30, 1995, instead of being transferred to the Reserve, and that he was not a member of the Coast Guard Reserve until he executed his Acceptance and Oath of Office (REH/REH) on March 8, 1996.

If the above correction reduces the number of years of satisfactory participation or qualifying years of satisfactory service for retirement purposes in his record, the Coast Guard shall adjust the dates of his drill points and waive annual training requirements as needed, before issuing his new SOCS and annual Retirement Points Statement, to ensure that he is credited with the same number of satisfactory years of participation and satisfactory years of service for retirement purposes with his new anniversary date that he had when his anniversary was miscalculated as October 23rd.

July 16, 2014

