

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2015-084



FINAL DECISION ON RECONSIDERATION

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case upon receipt of the applicant's completed application on April 28, 2015, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated March 4, 2016, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

BACKGROUND

In BCMR Docket No. 199-92, decided on June 24, 1993, the applicant, who was represented by counsel, asked the Board to void his 1990 and 1991 non-selections for promotion to commander in the Reserve and alleged that the selection boards were provided incorrect information regarding his experience indicator code (EIC) and his Reserve anniversary date. The applicant's military records show that he signed a regular, active duty enlistment contract on February 14, 1972; was released from his enlistment on June 5, 1974, to accept a Reserve commission; was appointed a Reserve officer the next day, June 6, 1974; was released from active to inactive duty on June 3, 1977, having completed more than 5 years and 3 months of active duty; and was discharged from the Reserve on June 30, 1992, following two non-selections for promotion to commander in December 1990 and 1991. His military records indicate that he was not retained in the Reserve until he would be eligible for retirement because the Coast Guard found that he did not have 18 years of satisfactory service.¹ As alternative relief in Docket No. 199-92, the applicant asked the Board to find that he had completed 20 years of satisfactory service and retire him.

¹ In the Reserve, a satisfactory year for retirement purposes is an anniversary year in which the reservist receives at least 50 points by completing drills, active duty for training, correspondence courses, etc. 10 U.S.C. § 1332(a)(2). A reservist earns 15 membership points per full year of service. A Reserve officer with at least 18 years of service may be retained for another two years to qualify for retirement even if they have twice been non-selected for promotion.

The Coast Guard recommended that the Board deny relief in 199-92 because the applicant had accumulated about 16 years, 4 months of satisfactory service on his date of discharge, including 2 years, 3 months, and 22 days of regular active duty and 14 years of satisfactory Reserve service. The Coast Guard explained that the applicant had four years in the Reserve that did not count as satisfactory years because he had not earned 50 points. The Coast Guard admitted that the applicant's EIC and civilian occupation code had been erroneous in the Register of Reserve Officers but pointed out that the correct EIC and civilian occupation were available in other documents furnished to the selection boards, such as his resume, his Officer Evaluation Reports (OERs), and the extract of information from the Personnel Management Information System provided to selection boards. The Coast Guard stated that these records contained the correct information and that the selection boards are expressly instructed to consider each candidate's OERs to decide which candidates are best qualified for promotion, while the other documents, such as the register, are considered ancillary. In addition, the Coast Guard stated that the Register of Reserve Officers is not a primary source for determining an officer's EIC or civilian occupation. Finally, the Coast Guard noted that the applicant's anniversary date had been misstated on his prior Annual Reserve Retirement Points Statements as February 14, but its calculations showed that the applicant had the same number of years of satisfactory service toward retirement regardless of which anniversary date (February 14 or June 6) is used to make the calculations.

In response, the applicant claimed that the Register of Reserve Officers is the primary source of an officer's EIC and that the error in the register was not negated by the fact that other documents reviewed by the selection board had the correct information. Regarding his years of service, the applicant alleged that his anniversary year 1989 would have been satisfactory but for budget cuts that prevented him from performing active duty training (ADT) and that he should have been granted a waiver. The applicant also argued that his anniversary year beginning June 6, 1992, would have been satisfactory except that he was discharged due to non-selection on June 30, 1992. He stated that he had received 53 points during those four weeks and should have been credited with a full year, but the Coast Guard prorated the points and gave him just 5 points instead of 53.

In the Final Decision, the Board reviewed the submissions of the applicant and the Coast Guard, the applicant's military records, and applicable law and found that the applicant had failed to prove that he was not selected for promotion because of any error or injustice in his record. The Board noted that he had not submitted any evidence, such as a copy of the Register of Reserve Officers or information about his civilian occupation or EIC. Regarding his years of service, the Board noted that the applicant had entered the Coast Guard on February 14, 1972, and had no breaks in military service until his discharge on June 30, 1992, but that this was insufficient for retirement because, to be eligible to retire, a reservist must have at least 20 years with at least 50 points each. The Board stated that the applicant's anniversary date was June 6th because he entered the Reserve on June 6, 1974, and that he had not received 50 points during his anniversary years ending in 1978, 1987, 1989, and 1990. With respect to the applicant's anniversary year beginning on June 6, 1992, and ending upon his discharge on June 30, 1992, the Board stated that the Coast Guard had erred by prorating all of his points, including those earned, instead of prorating just his 15 annual membership points, as allowed. Therefore, the Board found that the applicant was entitled to credit for one additional satisfactory year of service.

However, since the additional year brought his total to 17 years, 4 months, and 18 days, he was still not entitled to retirement. The Board noted that even if budget cuts prevented him from performing his annual ADT in anniversary year 1989, the applicant had not shown that he could not have earned the 50 points in some other manner and, in any case, adding 12 to 14 points for annual training to that anniversary year would not have made the year satisfactory by raising his total over 50 anyway. Therefore, the Board denied relief.

APPLICANT'S REQUEST AND ALLEGATIONS

In his request for reconsideration, the applicant alleged that a Computation of Retirement Points in his record was incorrectly prepared. He also alleged that he recently found evidence that false information was presented to the 1991 Reserve CDR selection board. He alleged that he discovered these errors in February 2015 because that is when he “was educated on the difference between [a] canceled and superseded document” and he discovered new evidence of error in his record. However, he argued, even if the Board finds that his request is untimely, it should be considered in the interest of justice.

Allegations about Satisfactory Years of Service

The applicant alleged that the Computation of Retirement Points in his record was prepared in accordance with the DoD Instruction 1215.7 issued on December 19, 1974, which was in effect at that time and states that it is applicable to the Coast Guard. However, he alleged, this instruction was canceled in 1993 because it was not compliant with 10 U.S.C. § 12732. The applicant alleged that when an instruction is “canceled,” instead of “superseded,” it means that the new instruction becomes retroactively effective as of the date of the original instruction. Therefore, he argued, the computation of his retirement points was not compliant with the statute and is erroneous. In this regard, the applicant stated that because he had no break in service, he could have no fractional years creditable toward retirement, only satisfactory or unsatisfactory years. He also noted that under the statute, no distinction is made between regular active duty and Reserve active duty and that all military service is counted in one-year increments. The applicant alleged that the Coast Guard's computation of his retirement points is erroneous because his active duty in the regular Coast Guard is not itemized in one-year increments—instead he is credited with a fraction of a satisfactory year—and because it is not indexed by his anniversary date. The applicant alleged that when 10 U.S.C. § 12732 is interpreted correctly, which it was not under the December 19, 1974, version of DoD Instruction 1215.7, and if June 6th is still considered his anniversary date, as the Board originally found under that instruction, then he had 18 satisfactory years of service on June 30, 1992, and under 10 U.S.C. § 12646(a), he was eligible for retention on active duty until he could retire with 20 years of service in 1994.

Allegations about New Evidence of Unjust Non-Selection

Regarding his non-selection for promotion, the applicant stated that he has found his copy of the Register of Reserve Officers dated February 12, 1992. He noted that on the register, his EIC is listed as 583152 00.² He stated that the “58” signifies electronics engineering, the “3”

² According to the Register of Reserve Officers, the first and second digits of an EIC identify an officer's mobilization billet and is the officer's primary experience indicator code; the third digit is the most recent grade

signifies lieutenant, the “15” signifies training, the “2” signifies lieutenant junior grade, and the final “00” indicates that his civilian occupation is “unknown.” The applicant alleged that the “3” should have been a “4,” denoting a lieutenant commander, and the “00” should have been a “01,” signifying engineering. The applicant stated that the correct information was provided to the Personnel Command on May 29, 1991, more than six months before the CDR selection board convened in December 1991, but the EIC in the Register of Reserve Officers shows that the correction was not timely made. Because of this error, the applicant alleged, the CDR selection board was given the information that he “had no known or usable civilian experience” and that he had “last served as an Electronic Engineer as a Lieutenant,” instead of a LCDR. The applicant stated that the “2” is also inaccurate because he had been an LCDR for several years. The applicant argued that although the Coast Guard claimed that the correct information was available to the selection boards in other documentation, the Board’s decision shows that the Coast Guard did not submit that documentation to the Board, so the Register of Reserve Officers, with erroneous information, is the only available evidence of what the selection boards saw. The applicant alleged that there is no evidence that the selection boards looked at his complete records. He alleged that they may not have bothered to look at his other records if they first looked at the Register of Reserve Officers and were misled about his experience.

In support of his allegations, the applicant submitted copies of the documents in the case file for BCMR No. 199-92,³ the BCMR’s decision, 10 U.S.C. § 12732, and the following documents:

- His Computation of Retirement Point Credits statement dated December 21, 1992, uses June 6, 1974, as his anniversary date—which is the date he was appointed an officer in the Reserve—and shows that his regular active duty was calculated separately from his Reserve service even though he had no break in service and that he was credited with 16 years, 4 months, and 18 days of total satisfactory service as of his discharge on June 30, 1992, with unsatisfactory years in 1978, 1987, 1989, and 1990, as well as for the period June 6 through 30, 1992, because 48 points were subtracted from the 53 he had received because of prorating.
- DoD Instruction 1215.7, issued on December 19, 1974, and the same instruction issued on October 15, 1993, which show distinct differences. The revised, 1993 instruction states that a member’s anniversary date is the date the member enters active duty or active service in the Reserve and that it will not be adjusted if a member transfers from one service to another unless the member has a break in service of more than 24 hours. The revised instruction also states that any full year of service in which a regular or Reserve member is credited with at least 50 points counts as a satisfactory year of service for the purpose of retired pay. The revised instruction requires prorating of membership

level in which the mobilization billet EIC was earned or currency requirements were met; the fourth and fifth digits indicate training and experience different from that required for the mobilization billet; the sixth digit identifies the most recent grade level in which the secondary experience indicator code was earned or currency requirements met; and the seventh and eighth digits identify the civilian occupation of the officer.

³ In the brief, the applicant’s attorney argued that the Coast Guard should use June 6th as the applicant’s anniversary date because he entered the Reserve on June 6, 1974, instead of his original date of enlistment in the regular Coast Guard, which was February 14, 1972. The brief states that the Coast Guard corrected this error without notifying the applicant in 1991.

points—but not points earned by completing drills, ADT, or correspondence courses—for partial years of service.

- A letter from the Coast Guard Reserve dated April 9, 2007, states that in response to the applicant's assertion that his points had been erroneously calculated, a thorough analysis had been performed. The letter states that his 2 years, 3 months, and 22 days of active duty had been “credited cumulatively and not subdivided into periods of qualifying service,” as the applicant had suggested they should be, in accordance with “the military services computation policies that were in force on your discharge date.” The letter cites the BCMR's decision and subsequent correspondence between the applicant and the Reserve and states that the applicant's computation would not be amended.
- In a memorandum to the District Command dated April 25, 1991, the applicant submitted updated information for his EIC. He also requested a waiver of the currency requirements for Electronics Engineer (the third digit in the code) and stated that he had not been able to perform all the ADT needed to complete the requirement because of budget shortfalls. A chief yeoman at the District Office prepared a Personnel Action form on May 29, 1991, asking the Personnel Command to update the first six digits of the applicant's EIC to 584152.

VIEWS OF THE COAST GUARD

On September 8, 2015, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC).

PSC argued that the application is untimely and should not be considered by the Board beyond a cursory review. PSC stated that under the Reserve Administration and Training Manual (RATMAN), COMDTINST M1001.27A, Enclosure 1-1, an “anniversary year” was defined for those entering the Reserve after June 30, 1949, as stemming “from the date of entry or reentry to the day preceding the anniversary of entry or reentry.” PSC argued that this definition refers only to service in the Reserve and not service in the regular Coast Guard.

PSC further stated that while 10 U.S.C. 12732 requires a reservist's years of service to be computed by adding each “one-year period” in which the reservist earned 50 points, the statute does not reveal how those one-year periods are to be determined “and does not apply to the calculation of the applicant's years of service while serving on regular active duty” because that statute falls under Chapter 1223 of Title 10, which is titled “Retired Pay for Non-Regular Service.” PSC argued that the applicant's active duty time is calculated pursuant to 10 U.S.C. 1405, and under that statute, a member may be credited with full years and full months of service, but days are to be disregarded.

Therefore, PSC opined that the applicant's correct anniversary date for calculating years of service in the Reserve is the date he entered the Reserve, June 6, rather than the day he enlisted, February 14, and so he can be credited with 2 years, 4 months of creditable active duty

for retirement purposes for his service on active duty from February 14, 1972, to June 5, 1974; 14 satisfactory years of Reserve service from June 6, 1974, through June 5, 1992 (not including the four unsatisfactory years with fewer than 50 points); and 1 full satisfactory year for his service from June 6 to June 30, 1992, because as the Board found in its original decision, the applicant received more than 50 points during those weeks. Accordingly, PSC stated, when the applicant was discharged in 1992, he did not have the 18 years of satisfactory service required for consideration for retention until retirement. Moreover, PSC noted, under Chapter 7-A-7-f of the RATMAN, reservists *may* be selected for retention but are not entitled to it, and the applicant also did not meet another criterion for retention, which was to have at least three of the prior four years preceding the selection board be satisfactory. PSC stated that the applicant did not meet this criterion because he did not receive 50 points to complete satisfactory years of service in his anniversary years ending on June 5 in 1989 and 1990. Therefore, he was ineligible for retention.

PSC stated that the revised version of DoD Instruction 1215.7 was issued in 1993, more than a year after the applicant's discharge. This instruction states, "The date used to determine the anniversary year is established by the date the member entered into active service or into active status in a Reserve component" and does not change unless the member has a break in service. Under this instruction, PSC stated, the applicant's anniversary date would be February 14, but even when his satisfactory years of service are computed using February 14 as his anniversary date, the applicant still does not have 18 years of service as of the date of his discharge and he still did not have at least three satisfactory years of service out of the four preceding the selection board. To demonstrate this fact, PSC made annotations on the applicant's Computation of Retirement Point Credits original prepared in 1991 using a February 14 anniversary date. On the original, the applicant was credited with 15 years of satisfactory service as of February 13, 1991. The annotations show that he would be credited with one more year of satisfactory service as of February 13, 1992, and a second additional satisfactory year of service for the period from February 14 to June 30, 1992, bringing his total to 17 years of satisfactory service for retirement purposes.

Regarding the applicant's EIC, PSC submitted copies of the applicant's 1990 and 1991 OERs, which show the correct EICs in block 1 of each OER above the applicant's signature. PSC stated that the selection boards were instructed to use the candidates' OERs as the "primary documents" for making its selections. The Register of Reserve Officers, the applicant's resume, and the database extract were ancillary documents. PSC stated that although the applicant's EIC was incorrect in the Register of Reserve Officers published in February 1992, it was correct on his OERs, which he signed. PSC noted that the applicant did not submit any new information to justify a decision different than the denial of relief in the Board's decision in his original case, 199-92.

PSC also recommended denying the applicant's request for retirement because although he was affiliated with the Coast Guard and Coast Guard Reserve from February 14, 1972, to June 30, 1992, he had unsatisfactory years of service and so earned at most 17 years of satisfactory service. PSC stated that whether the February 14 or June 6 anniversary date is applied, the applicant had not completed 18 years of satisfactory service by the date of his discharge and so was ineligible for consideration for retention until he attained 20 years. PSC stated that he was also ineligible for consideration for retention because he did not meet the criterion of having 3

out of the 4 anniversary years preceding the selection board count as satisfactory for retirement purposes.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 28, 2015, the applicant responded to the views of the Coast Guard. He argued that his application is timely because neither he nor the Coast Guard were aware until recently of the implications of "canceled" instructions and because the Register of Reserve Officers "could not be located by the Coast Guard or myself" prior to the Board's original decision.

The applicant objected to PSC's reliance on regulations in the RATMAN because PSC did not show the effective date of the manual and the extracts PSC submitted are "taken out of context" and "not available to the general public."⁴ The applicant also objected to the annotated copies of his military records because they are "not dated, not signed, and not verified" and he did not receive notification of the annotations on a Page 7 (CG-3307).

The applicant argued that because a reservist's anniversary date is not statutorily defined, "the one-year period is open to agreement between the service and the individual." He also argued that the 1993 DoD Instruction 1215.7 "takes precedence" over the RATMAN in effect in 1992 and does not support the selection of June 6 as his anniversary date.

The applicant alleged that under applicable statutes, he had 18 years of service. He argued that he should be credited with an additional year of service because of his partial year on active duty from February 14, 1974, to June 5, 1974, which he argued should count for an entire year.

The applicant complained that the BCMR's correction of the computation of his retirement points pursuant to the decision for 199-92 should have been made on a Page 7, instead of with hand annotations of the original points statement. The applicant cited no policy or regulation requiring use of a Page 7, however.

The applicant stated that Chapter 14-D-3.d. of the RATMAN requires selection boards to use their own judgement and Chapter 14-D-5.b. requires selection boards to choose their criteria for making selections. In addition, COMDTINST 1401.4L states that *all* officers in an active status, except those already on a promotion list and those "locked in to complete 20 years of satisfactory years for retirement." Therefore, the applicant argued, the Reserve exceeded its authority by imposing additional criteria for retention, finding him ineligible for retention, and not presenting his record for consideration.

The applicant also repeated several of the arguments he made in his original case and in his application in this case. In particular, he complained that he was not timely informed when the Coast Guard changed his anniversary date from February 14 to June 5. He alleged that had

⁴ The Board notes that old Coast Guard manuals, including the RATMAN, are available at Federal Depository Libraries.

he been timely informed, he would have been able to ensure that he earned another satisfactory year of service.

In support of his allegations, the applicant submitted copies of statutes, extracts of the RATMAN, and the following documents:

- COMDTINST 1401.4L, issued on February 9, 1990, provided the schedule for the promotion year 1991 (i.e., calendar year 1990) selection boards and guidance for the eligible candidates. The instruction states that the laws in Title 14 U.S.C. Chapter 21 “provide for the selection and promotion [of candidates] on a best qualified basis ... [and] for the convening of retention boards.” It also states, “In the case of retention boards, all officers in an active status in the appropriate grade on the convening date of the board except those on an approved promotion list or locked in to complete 20 satisfactory years for retirement, will be considered.
- The precept for the Reserve commander selection board that convened on December 2, 1991, which is signed by the Commandant, instructed the selection board to select the 40 best qualified candidates out of 108. The precept advised the board to apply the guidance in the Personnel Manual and to consider the candidates’ OERs, performance of primary and collateral duties, education, training, awards, personality characteristics, dedication, operational readiness, command experience, etc., in making their selections. The precept also stated that the board should be “governed by its own judgment as to the criteria for qualification.” Paragraph k of the precept states that “Ancillary information made available to the board, such as the Register of Reserve Officers, Reserve Officer Personal Resume, etc., is provided to assist in the Board’s deliberations. The veracity of such ancillary information must be ascertained if it is to be considered in rendering decisions.” Finally, paragraph 11 of the precept stated that, after making its selections for promotion, the board “shall review the records of those officers with less than 18 years of service who have failed of selection a second time and whose 3 of the last 4 years were satisfactory for retirement and who, in accordance with Section 7-A-7.f. of [the RATMAN], are eligible for administrative retention. The Board shall recommend as many of these officers that it finds deserving for continuation in an active status” until they obtain 20 satisfactory years for retirement.
- The report of the Reserve commander selection board that convened on December 2, 1991, states that the “performance record of each officer was carefully examined,” that communications from the candidates were “read and noted,” and that the board had selected those that were “best qualified for promotion.” The report also forwarded the list of officer selected “for administrative retention in accordance with Section 7-A07.f. of [the RATMAN].” The applicant’s name is on the list of candidates considered for promotion but not on the list of those selected. Instead, his name appears on the list of those not selected for promotion and on the list of those who had twice failed of selection. The applicant’s name does not appear on the list of candidates selected for retention or not selected for retention, indicating that he was not deemed eligible for consideration for retention.

- A memorandum from the Commandant to the Secretary, dated December 12, 1991, forwarded the list of Reserve lieutenant commanders selected for promotion to commander, stating that the selection board, which had convened on December 2, 1991, had been instructed to select the 40 best qualified for promotion out of 108.
- A copy of the applicant's DD 214 for his enlisted active service from February 14, 1972, to June 5, 1974.
- A letter from the Coast Guard Personnel Command to a Senator, dated April 18, 2003, stating that the applicant was ineligible for retirement because he had "16 years, 4 months, and 17 days of satisfactory years of creditable service for retirement" and that the BCMR had found in Docket No. 199-92 that he was ineligible for retirement benefits.

APPLICABLE LAW AND REGULATIONS

Reserve (Non-Regular) Retirement

In 1992, the Reserve retirement statutes were located at 10 U.S.C. § 1331 *et seq.*

§ 1331. Age and service requirements

(a) Except as provided in subsection (c), a person is entitled, upon application, to retired pay computed under section 1401 of this title, if—

- (1) he is at least 60 years of age;
- (2) he has performed at least 20 years of service computed under section 1332 of this title;
- (3) he performed the last eight years of qualifying service while a member of any category named in section 1332(a)(1) of this title, but not while a member of a regular component, the Fleet Reserve, or the Fleet Marine Corps Reserve; and
- (4) he is not entitled, under any other provision of law, to retired pay from an armed force or retainer pay as a member of the Fleet Reserve or the Fleet Marine Corps Reserve.

• • •

(e) Notwithstanding section 8301 of title 5, the date of entitlement to retired pay under this section shall be the date on which the requirements of subsection (a) have been completed.

§ 1332. Computation of years of service in determining entitlement to retired pay

(a) Except as provided in subsection (b), for the purpose of determining whether a person is entitled to retired pay under section 1331 of this title, his years of service are computed by adding—

• • •

(2) each one-year period, after July 1, 1949, in which he has been credited with at least 50 points on the following basis—

- (A) one point for each day of—
 - (i) active service; or
 - (ii) full-time service under sections 316, 502, 503, 504, and 505 of title 32 while performing annual training duty or while attending a prescribed course of instruction at a school designated as a service school by law or by the Secretary concerned;
 if that service conformed to required standards and qualifications;

(B) one point for each attendance at a drill or period of equivalent instruction that was prescribed for that year by the Secretary concerned and conformed to the requirements prescribed by law, including attendance under section 502 of title 32; and

(C) points at the rate of 15 a year for membership in a reserve component of an armed force, in the Army or the Air Force without component, or in any other category covered by subsection (a)(1) except a regular component.

Enclosure 1-1 of the RATMAN in effect in 1992 defines “anniversary year” for those entering the Reserve after June 30, 1949, as extending “from the date of entry or reentry to the day preceding the anniversary of entry or reentry.” It does not define “anniversary date.”

DoD Instruction 1215.7, issued on December 19, 1974, did not address how an “anniversary date” should be set. However, when that instruction was canceled and updated on October 15, 1993, the term “anniversary date” was defined as “the date the member entered into active service or into active status in a Reserve component.” In addition, it provides that the anniversary date remains the same unless the member has a break in service of at least 24 hours. It also provides that a member may be credited with a partial year of service and that “[p]artial years of qualifying service may be combined and credited towards total qualifying service.”

Reserve Retention

[10 U.S.C.] § 1006. Commissioned officers: retention of after completing 18 or more, but less than 20, years of service

(a) If on the date prescribed for the discharge or transfer from an active status of a reserve commissioned officer he is entitled to be credited with at least 18, but less than 19, years of service computed under section 1332 of this title, he may not be discharged or transferred from an active status under Chapter 337, 361, 363, 573, 837, 861, or 863 of this title or chapter 21 of title 14, without his consent before the earlier of the following dates—

(1) the date on which he is entitled to be credited with 20 years of service computed under section 1332 of this title; or

(2) the third anniversary of the date on which he would otherwise be discharged or transferred from an active status.

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.
2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation. *See Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required by 10 U.S.C. § 1552).
3. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice in his record. 10 U.S.C. § 1552(b). The applicant alleged that he discovered the error in his record recently when researching the meanings of “canceled” and “superseded.” However, the record shows that the applicant was aware of the alleged error and injustice that he is asking the Board to correct—his non-selection and lack of retirement—when he applied to the Board in 1992. The fact that he is presenting a new argument about the alleged error and injustice does not re-set the date of discovery. Moreover, under the Board’s regulations, requests for reconsideration should be filed within two years of the date of a Board decision. 33 C.F.R. § 52.67. The Board’s original decision in this case was issued in 1993. Therefore, the request for reconsideration is not timely.

4. Pursuant to 10 U.S.C. § 1552(b), the Board may excuse the untimeliness of an application if it is in the interest of justice to do so. In *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that to determine whether the interest of justice supports a waiver of the statute of limitations, the Board "should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review." The court further instructed that "the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review." *Id.* at 164, 165. See also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

5. The applicant has not justified his delay in requesting reconsideration. The record shows that he applied to the Board in 1992 and challenged his lack of retirement again in a letter to the Coast Guard in 2007. The applicant has not shown that anything prevented him from presenting his new arguments to the Board timely.

6. The Board's cursory review of this case shows that the applicant's claims regarding his non-selection for promotion in 1991 cannot prevail. With regards to the erroneous EIC in the Register of Reserve Officers, the applicant has not submitted any new evidence that he could not have submitted with his original application. Although he alleged that the Board did not have his OERs in 1993, that claim is incorrect because the decision in 199-92 clearly states that the Board reviewed his military records, which contain his OERs. Although the decision states that the 1992 Register of Reserve Officers was not submitted into evidence before the Board in that case, the Board finds that the applicant could have submitted it with due diligence for 199-92. Likewise all of the documents pertaining to the 1990 and 1991 selection boards were available and could have been submitted by the applicant for 199-92. Therefore, his submissions and arguments regarding his non-selection for promotion and retention do not meet the criteria for reconsideration under 33 C.F.R. § 52.67.

7. As the Coast Guard argued, Coast Guard policies required the selection boards to use the candidates' OERs to make their selections, and the applicant's OER had the correct EIC. In addition, the precept for the selection board clearly stated that other records, such as the Register of Reserve Officers, were "ancillary" and that the accuracy of such ancillary records should be verified if the selection board was to rely on them. Therefore, as the Board found in the decision for 199-92, this Board finds that the applicant has not shown that his non-selection for promotion in 1991 was prejudiced by error or injustice.

8. The Board's cursory review of the applicant's claim that the Commandant imposed improper limitations on the selection boards and that he should have been a candidate for retention shows that these claims likewise lack merit. Although the applicant made many arguments about the Coast Guard's various policies for selection boards being contradictory, the Board finds no contradiction in those policies that would warrant relief and no violation of the statutes. It is not contradictory to advise selection boards to consider various aspects of candidates' performance and to rely on OERs while also advising them to use their own criteria and judgment in selecting candidates. The Board notes that the applicant submitted COMDTINST 1401.4L, issued on February 9, 1990, which states that for the PY 1991 selection boards (calendar year 1990) all officers in an active status except those on a promotion list or "locked in" to

retire would be considered for retention, but the applicant was not a candidate for retention in 1990 because he had not yet failed of selection twice. On May 14, 1991, the Coast Guard issued a new RATMAN in which Chapter 7-A-7.f. limited consideration for retention to those with, *inter alia*, “3 of the last 4 years must be satisfactory service for retirement.” This RATMAN policy applied to the PY 1992 CDR selection board convened in December 1991 and prevented him from being considered for retention because he did not meet this new criterion whichever anniversary date (February 14 or June 6) is used. The Computation of Retirement Point Credits statements⁵ in the record show that, using either February 14 or June 6 as his anniversary date, when the selection board convened in December 1991, two of his prior four anniversary years were unsatisfactory (1989 and 1990). The applicant has not shown that this limitation on retention eligibility in Chapter 7-A-7.f. of the RATMAN was impermissible or unjust.

9. The change in regulations under DoD 1215.7 justifies reconsideration of the applicant’s retirement request pursuant to 33 C.F.R. § 52.67, but his request for reconsideration is untimely and so only a cursory review is warranted. The revised DoD 1215.7 indicates that the applicant’s anniversary date should have been February 14, as he was originally told, instead of June 6. The record shows that up until 1991, the Coast Guard and the applicant considered his anniversary date to be the date he entered active duty, February 14 (1972). In 1991, the Coast Guard decided that it should be the date he entered the Reserve instead, June 6 (1974), and in 199-92, the applicant’s attorney concurred with the change and the Board agreed, as did PSC in the advisory opinion for this case. However, under the updated version of DoD Instruction 1215.7, issued in 1993 after the applicant’s discharge, the applicant’s anniversary date would be February 14. Although the applicant has not shown that the reissuance of the instruction and consequent cancelation of the prior instruction rendered the Coast Guard’s and the BCMR’s determination of his anniversary date erroneous,⁶ even if it does, regardless of which anniversary date is applied, the applicant did not earn 18 years of satisfactory service, as explained below.

10. The applicant was a member of the Coast Guard and Coast Guard Reserve for 20 years, 4 months, and 17 days, from February 14, 1972, through June 30, 1974. However, he had four full unsatisfactory years for retirement purposes whichever anniversary date is applied. The record shows that using June 6 as his anniversary date, the applicant’s anniversary years ending on June 6 of 1978 (15 points), 1987 (19 points), 1989 (25 points), and 1990 (35 points) were unsatisfactory for retirement purposes. The applicant argued that using June 6 as his anniversary date credits him with 2 years and a partial year of satisfactory service while on active duty from February 14, 1972, to June 5, 1974, and 14 years plus a partial year of satisfactory service (from June 6 to 30, 1992) in the Reserve. The applicant argues that each partial year should be counted as a separate whole year, which would bring his total to 18 years. However, the rules in DoD 1215.7 state that a member may only have a partial year when the member has a break in service, and the applicant had no break in service 1974. It also states that partial qualifying years “may be combined and credited towards total qualifying service,” not that each partial year in which a member earns 50 points necessarily counts as a whole year.

⁵ The Board notes that the applicant objected to the handwritten annotations on these documents, but he has not shown that they are erroneous or unreliable.

⁶ The Board notes that the Coast Guard always cancels prior instructions, such as Personnel Manuals, when issuing new instructions and does so to change the regulations prospectively, not retroactively.

11. Another Computation of Retirement Point Credits in the applicant's record shows that he also had four unsatisfactory anniversary years if February 14 is used as his anniversary date: the anniversary years ending on February 13 of 1979 (45 points), 1987 (47 points), 1989 (43 points), and 1990 (19 points). This computation shows that, using February 14 as his anniversary date, the applicant had 16 full satisfactory years of service and a final fraction of a year, from February 14, 1992, until his discharge on June 30, 1992, in which he earned 46 points.

12. The applicant has not shown that as a reservist who served a total of 20 years, 4 months, and 17 days in the military, he can be credited with 18 satisfactory one-year periods of service, as required by 10 U.S.C. § 1006⁷ for entitlement to retention, when he had 4 one-year unsatisfactory periods no matter which anniversary date—February 14 or June 6—is used in the computations. Because he did not have 18 years of satisfactory service upon his date of discharge, he was not entitled to retention and so his request for retirement cannot prevail.

13. The Board's review of this case shows that none of his claims can prevail on the merits. Therefore, the Board will not excuse the untimeliness or waive the statute of limitations. His request for relief should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁷ Now renumbered as 10 U.S.C. § 12646.

ORDER

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

March 4, 2016

