

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-120



FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the completed application on March 31, 2017, and assigned it to staff attorney [REDACTED] to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated March 23, 2018, is approved and 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 former Seaman/E-3 who was discharged from the Coast Guard Reserve on April 29, 1988, asked the Board to correct his record by correcting his Reserve Points Statement to indicate that he completed six satisfactory years of service instead of five. He also asked for a Discharge Certificate or similar document to indicate his honorable service. He claimed that his time spent on Active Duty Training was not properly credited during the anniversary year October 30, 1982, to October 29, 1983. He stated that on January 26, 1983, he reported to [REDACTED] "A" School to complete his active duty obligation. He was academically dropped from the school on February 24, 1983, and was ordered to report to the USCGC [REDACTED] in order to complete his obligation. He stated that he was then released back to the Reserve on April 15, 1983.

Regarding the timing of his application, the applicant stated that he was unaware of the alleged error in his record until he applied for a mortgage with the Department of Veterans Affairs in September of 2016. He stated that at that time, he attempted to obtain a complete copy of his military record. He received a copy on February 25, 2017, but he stated that the version he received was incomplete as there were items missing from his record. The applicant provided relevant documents with his application, which are discussed below in the Summary of the Record.

SUMMARY OF THE RECORD

The applicant enlisted in the Reserve on October 30, 1981, for a term of six years, in the “RK” Reserve category and class. His orders to attend recruit training in the summer of 1982 also state that he was in the “RK” service category. He attended recruit training from June 21 to August 27, 1982, when he was released to inactive duty. The Personnel Action entry completed upon his release from active duty states that he was in the “RK” Reserve category and class.

The applicant began [REDACTED] “A” School on January 26, 1983. The full course length was to be nineteen weeks. An administrative entry dated February 25, 1983, in his military record states that he was disenrolled due to academic failure and he was “transferred to USCGC [REDACTED] for completion of obligated active duty time.” A Personnel Action entry in the applicant’s military record dated April 16, 1983, states that the applicant had completed his three months of Initial Active Duty Training (IADT) while aboard the USCGC [REDACTED]. He was still in the “RK” Reserve category and remained in that category until his discharge.

The applicant’s Retirement Points Statement for the anniversary year October 30, 1982, to October 29, 1983, states that the applicant did not receive any drill or active duty points for January through April. He received four drill points in each month May through November, and received three drill points in December.

The only DD 214 in the applicant’s record documents his active duty from May 13 to September 6, 1985, on temporary duty orders.

On October 30, 1987, the applicant’s Reserve unit prepared an agreement to extend his enlistment. The document notes that his total active federal service at that time was six years.

The applicant’s computation of Retirement Point Credits shows that for the anniversary year October 30, 1982, to October 29, 1983, he received a total of 46 points: 15 membership points and 31 points for inactive duty but no points for active duty. He earned more than 50 points in his anniversary years ending in 1982, 1984, 1985, 1986, and 1987, which made them satisfactory years of military service for retirement and other purposes.

The applicant was honorably discharged from the Reserve on April 29, 1988.

VIEWS OF THE COAST GUARD

On August 17, 2017, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant relief in this case. He stated that the anniversary year October 30, 1982, to October 29, 1983, does not show any points credited for January through April, yet the applicant was enrolled in [REDACTED] “A” School and then reassigned to the USCGC [REDACTED]. The applicant’s records show that he completed his Initial Active Duty Training on April 16, 1983. Therefore, the JAG stated that he should be credited with an additional 81 points for active duty service from January 26, 1983, to April 16, 1983, which would entitle him to a “good year of service for retirement.” With his recommendation, the JAG also

adopted the findings and analysis in a memorandum on the case prepared by the Coast Guard's Personnel Service Center (PSC).

PSC likewise recommended that the Board grant relief. PSC noted that according to the applicant's Reserve Retirement Points Statement, for the anniversary year October 30, 1982, to October 29, 1983, he earned 46 retirement points. A reservist must earn a minimum of 50 points to qualify for a satisfactory anniversary year. However, PSC stated that his Initial Active Duty Training was not properly calculated, "thereby causing him to earn an unsatisfactory year for retirement purposes." PSC asserted that the applicant's record clearly shows that he earned an additional 81 points from January to April, 1983, as follows:

January: 6 points from January 26 through [REDACTED]
February: 28 points
March: 31 points
April: 16 points through April 16 [REDACTED]

PSC therefore recommended that the Board grant relief to show the above points on his Reserve Retirement Points Statement. PSC also recommended that he be issued a Statement of Service, as reservists are not issued "discharge certificates" as the applicant requested.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 1, 2017, the Chair sent the applicant a copy of the JAG's advisory opinion and invited him to respond within 30 days. On September 7, 2017, the applicant responded and stated that he did not object to the Coast Guard's recommendation.

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. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.¹ The applicant was discharged from the Coast Guard Reserve in 1988. He claimed that he discovered the alleged error in 2016; however, he would have been mailed his Reserve Retirement Points at the time. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in 1988, and his application is untimely.
3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.² In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the Board should not deny an application for untimeliness without "analyz[ing] both the reasons for the delay and the potential merits of the claim based on a cursory review"³ to determine whether the interest

¹ 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

² 10 U.S.C. § 1552(b).

³ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

of justice supports a waiver of the statute of limitations. The court noted 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.”⁴ Although the applicant in this case did delay filing his application, the evidence of record reveals material and prejudicial errors in his record and so the Board finds that it is in the interest of justice to excuse the untimeliness of the application.

4. The Reserve Retirement Points Statement for the anniversary year October 30, 1982, to October 29, 1983, shows that the applicant did not perform any active duty or drills from January to April. The statement shows that he received 15 membership points for the year, four points for drills May through November, and three points for drills in December. However, the applicant’s record also shows that he attended [REDACTED] “A” School from January 26, 1983, until he was transferred to the USCGC [REDACTED] after academic failure on February 25, 1983. A Personnel Action entry dated April 16, 1983, states that the applicant completed his Initial Active Duty Training aboard the USCGC [REDACTED]. Given all of the available documentation and the Coast Guard’s recommendation to grant relief, the Board finds that the applicant has proven by a preponderance of the evidence that his Reserve Retirement Points Statement for the anniversary year October 30, 1982, to October 29, 1983, is erroneous because it fails to reflect his active duty for training from January 26 to April 16, 1983. His record should be corrected to show that he was credited with 81 active duty points during that period and a satisfactory year of service on his anniversary date in October 1983.

5. The applicant also requested a discharge certificate or other document showing his honorable discharge. Reservists are generally not eligible for DD-214s except when they are being released from a period of active duty of at least 90 days, as when the applicant performed more than three months of active duty in 1985.⁵ The DD-214 manual in effect during the applicant’s enlistment, COMDTINST M1900.4B, provides an exception, however, for reservists in the RK category who are being released from “their second phase of initial active duty for training [IADT] regardless of its length.”⁶ Reservists were issued a DD-214 under these circumstances to document their completion of both periods of IADT. Therefore, the applicant should have received a DD-214 documenting his release from his second phase of IADT on April 16, 1983. The Coast Guard should issue him this DD-214 and also, as the Coast Guard recommended, a Statement of Service documenting all of his active and inactive duty in the Reserve and his honorable discharge.

6. The Coast Guard should therefore correct the applicant’s record by adding 81 active duty points for the period January 26 to April 16, 1983, so that he will be credited with a satisfactory year of service for the anniversary year from October 30, 1982, to October 29, 1983. The Coast Guard should also issue the applicant a DD-214 documenting his completion of his second phase of IADT on April 16, 1983, in accordance with COMDTINST M1900.4B, Article 1-A-1.b.(2)(b), as well as a Statement of Service reflecting all of his active and inactive duty in the Coast Guard Reserve and his honorable discharge.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁴ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

⁵ COMDTINST M1900.4B, Article 1-A-1-d.(3).

⁶ *Id.* at Article 1-A-1.b.(2)(b).

ORDER

The application of former SN [REDACTED], USCGR, for correction of his military record is granted. The Coast Guard shall make the following corrections to his record:

- Add 81 points for his active duty from January 26, 1983, through April 16, 1983, so that he shall be credited with a satisfactory year of service for the anniversary year October 30, 1982, to October 29, 1983;
- Issue him a DD-214 documenting his release from his second phase of IADT on April 16, 1983, in accordance with Article 1-A-1.b.(2)(b). of COMDTINST M1900.4B; and
- Issue him a Statement of Service documenting all of his active and inactive duty in the Coast Guard Reserve and his honorable discharge.

March 23, 2018

