

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 128-96

FINAL DECISION

Chairman:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on June 24, 1996, upon the BCMR's receipt of the applicant's request for correction of his military record.

The final decision, dated August 15, 1997, is signed by the three duly appointed members who were designated to serve as the Board in this case. The decision was issued more than 10 months after the Board's receipt of the application, but the 10-month rule does not apply to this case because the Board never received the applicant's military records.¹

Request for Relief

The applicant, a former [REDACTED] who was discharged on June 30, 1993, asked for reinstatement in the Coast Guard Reserve so that he could qualify for retirement.

The applicant alleged that the Reserve's drill-point record-keeping system failed to measure accurately his reserve retirement points. "After exhaustive research, [the applicant] documented 5 additional years" in addition to the 12 "good"² years found by the Coast Guard." The applicant said that he found it

¹ The Coast Guard saw the military records and was able to use them in preparing the advisory opinion. The Coast Guard, however, mislaid the applicant's records before they could be examined by the BCMR.

² In this context, "good" means satisfactory for retirement.

"inexcusable that the Coast Guard records for five years of [his] participation were completely inaccurate."

A sixth year (1980), which would have given him the required 18 good years, was, he alleged, still in dispute. On that year (1980), his drill card and payroll records documented that he had earned 292 out of the required 300 points. If he had not been short 8 drill points, he would have had an 18th good year. He claimed that his personal records showed he drilled two additional weekends, which would have meant he was entitled to an additional 8 points.

The applicant alleged that he served honorably in the Coast Guard for the number of years necessary to retire. He alleged that during his extended active duty in 1980-1981, he became very ill. Despite the illness, he continued to participate in the Reserves. He stated that the rules were "misinterpreted" by the Coast Guard to require that he be discharged in 1993 due to a desire to downsize the Reserve and to reduce retirement obligations.

Views of the Coast Guard

On June 23, 1997, the BCMR received the recommendations of the Coast Guard as to this application. Both the Chief Counsel of the Coast Guard and an officer of the Coast Guard Personnel Command (CGPC) recommended that relief not be granted.

The CGPC confirmed that the applicant had maintained his affiliation with the Coast Guard for 25 years "during which he earned 17 years of satisfactory service for retirement purposes." The CGPC said that the Coast Guard Reserve had tried to resolve the disputed issue in the applicant's favor, but the applicant did not "provide the necessary documentation which would allow AY (anniversary year) 1980 to be treated as a satisfactory year of federal service for retirement purposes."

The Chief Counsel of the Coast Guard said that the application for relief should be denied for failure of proof and untimeliness.

The Chief Counsel said that retirement points for a given anniversary year may not be applied to other years. He said that the sole remaining and dispositive issue in this case is whether the applicant earned 50 or more retirement points in his 1980 anniversary year, thus making it a satisfactory one. According to the Coast Guard the applicant "has not provided even substantial evidence that his AY 1980 Reserve participation was sufficient to qualify as a satisfactory year for retirement and retention. . . . At any rate, he has not established prima facie proof that he is entitled to the requested relief."

The Coast Guard observed that if the applicant had performed drills sufficient to earn him eight additional points, "his own failure to document these drills . . . may well be the reason that they are not in his record." It maintained that the applicant did not establish that any failure to document the AY 1980 drills correctly was due to Coast Guard error rather than applicant error.

The Coast Guard also alleged that the applicant's application for correction in 1996 was untimely because it should have been filed within three years of the alleged error or injustice by the Coast Guard. The alleged error or injustice occurred in 1980 when his retirement point total was unfairly low. The Coast Guard alleged that it was not in the interest of justice to consider his "untimely application to correct that record." The Service also argued that the availability of documents and the recollection of witnesses "have deteriorated for sixteen years" and that as a result "neither Applicant nor the Coast Guard can demonstrate, much less verify, that applicant is entitled to more retirement points for 1980."

The eligibility for retention of Reserve officers is governed by Article 7-A-7(f) of the Reserve Administration and Training Manual (RATMAN). The subsection, as submitted as enclosure (1) of the CGPC submission provides as follows:

f. A commander or lieutenant commander who twice fails of selection may be retained for not more than the minimum period of time necessary to complete 20 satisfactory years for retirement, plus 1 additional year, if required, if so recommended by the selection board in which the second failure of selection occurs. To be eligible for (selective) retention, the officer must:

- (1) have less than 18 years of satisfactory service for retirement;
- (2) have 75% of their total commissioned service³ as satisfactory service for retirement;
- (3) 3 of the last 4 years must be satisfactory service for retirement;
- (4) performance record must document sustained active participation;
- (5) have solid performance in current grade.

The term "total commissioned service" is not defined in the RATMAN. The CGPC interpreted 75% of total commissioned service as meaning a "minimum of 50 retirement points per year."

Applicant's Response to the Views of the Coast Guard

On June 25, 1997, the Board sent a copy of the advisory opinion to the applicant with a request for comments, if appropriate. On August 1, 1997, the Board received the applicant's response to the advisory opinion of the Coast Guard.

The applicant said that he has less than 18 years of satisfactory federal service; in fact he asserted that he has 17 good years. He alleged that he has only 22 years service "for retirement." If his years in the inactive reserve were included, he would have 25 years of federal service, but "[s]ervice in an inactive status may not be counted in any computation of service under this chapter."

A participation summary attached to his submission asserts that the last four years were "good" years for retirement purposes. He also stated that he met the other two requirements for retention - documentation and performance.

The applicant admits that if his years in inactive status are counted, he would have less than 75% of his total commissioned service as satisfactory years for retirement. He would, in fact, have 68%. He stated, when he was transferred to the inactive status list, that he was advised that he could not "accrue retirement points; participate in any Reserve training activities or be considered for promotion."

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the submissions of the applicant and the Coast Guard, the military record of the applicant, and applicable law.

1. The Board has jurisdiction to determine the issues in this proceeding under section 1552 of title 10, United States Code.

2. The application was timely, under Detweiler v. Peña, 38 F.3d 591 (1994). The applicant was discharged from the Coast Guard on June 30, 1993, and he applied to the BCMR for relief within three years after his separation, on June 24, 1996. The alleged error or injustice was discovered by him in 1993, when he was discharged for failing to meet the retention eligibility standards.

3. The applicant requested an oral hearing "if it will help." The Chairman, pursuant to § 52.31 of the Board's rules, recommended disposition on the merits without a hearing. The Board concurred.

4. Article 7-A-7(f) of the 1986 edition of the Reserve Administration and Training Manual (RATMAN) provides that a "commander or lieutenant

commander who twice fails of selection and who has completed less than 18 years of satisfactory service for retirement may be retained for not more than the minimum period of time necessary to complete 20 satisfactory years plus 1 additional year, if required, if so recommended by the selection board in which the second failure of selection occurs (selective retention)." The text of this section set forth by the Coast Guard Personnel Command (CGPC) in 1997 contains four additional requirements.

5. The applicant met four of the five requirements - less than 18 years of satisfactory service for retirement; three of the past four years satisfactory; documented active participation; and solid performance. He can not, however, show that 75% or more of his "total commissioned service" consists of "satisfactory service for retirement." If his "inactive status" years (3) are subtracted from his total years of service (25), he would have had 22 years of service or more than the minimum required 75%.

Such a subtraction is, however, inconsistent with the plain meaning of the term "total commissioned service." An inactive officer is still a commissioned officer.

6. Accordingly, the application for correction should be denied on the merits without prejudice, unless the applicant submits to the Board evidence that he earned an additional 8 points toward retirement in 1980. The applicant claimed that he had personal records of two additional weekends of active duty that were not credited, but he never submitted such material. He might also be able to submit a statement by another officer or a letter mentioning that he was on drill. If the applicant submits any such material, a new proceeding will immediately be opened.

ORDER

The application to correct the military record of former [REDACTED]
[REDACTED] USCGR, is denied.

