

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2005-036

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

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 on December 7, 2004, upon the receipt of the completed application and military records.

This final decision, dated October 27, 2005, is signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant asked the Board for "completion of 20 years [of] active duty service." The applicant alleged that in a prior case, BCMR Docket No. 2002-172, the Board recognized that he had completed over 18 years of active duty. Therefore, he argued, he should have been retained until he could complete 20 years of service and retire. However, he alleged, he was wrongfully terminated with more than 18 but less than 20 years of active duty, contrary to federal law. Therefore, the applicant asked the Board to return him to active duty so that he can complete 20 years of service and be considered for advancement. He also asked for back pay and allowances from the date of his wrongful termination on June 30, 2001, to the present. Moreover, the applicant stated that if he had been retained on active duty, he would have been considered by promotion boards and would have advanced to E-8 or E-9. He alleged that prior to his discharge, he had been on an advancement list for E-8 and that the "sole matter blocking him was the two-year service obligation for each promotee."

PRIOR CASE: BCMR DOCKET NO. 2002-172

On his application in BCMR Docket No. 2002-172, the applicant asked the Board to correct his record by adding 112 days of active duty for training (ADT)¹ to his Statement of Creditable Service (SOCS) during the period between December 15, 1986, and September 30, 2001. The applicant alleged that although he performed 112 days of ADT between December 15, 1986, and September 30, 2001, the days were not recorded in his record. He stated that between August 1998 and June 2001, when he was recalled to active duty, he became aware of several major problems with his record upon receiving a copy of his SOCS. He alleged that when he "notif[ied the] proper authorities [of] what errors needed [to be] corrected; ... the problem got worse" in that additional errors were made while his SOCS was administratively corrected. The applicant also complained when he had pointed out that his DD 214s did not match the SOCS, he was told that DD 214s were not an official record of service. Finally, the applicant asked for a determination of whether he had completed 18 years of service so as to entitle him to retention until completion of 20 years of service.

In his advisory opinion for BCMR Docket No. 2002-172, the Chief Counsel of the Coast Guard recommended that the Board grant partial relief. He argued that the records supported crediting the applicant with 69 additional days/drill points for ADT not reflected on his then most recent SOCS: 15 points for 15 days of ADT between December 15, 1986, and April 15, 1987, because the applicant had erroneously been credited with only 107 days of ADT for that period; 1 point for 1 day of ADT not previously credited in March 1988; 6 points for 6 days of ADT from January 22 through January 27, 1989, that was not previously credited; and 47 points for 47 days of ADT between August 15 and September 30, 2001. However, the Chief Counsel argued, the applicant presented insufficient documentation for the 12 days of alleged non-consecutive ADT between August 1 and September 30, 1994. He stated that the applicant did not receive credit for the 12 days because his Reserve orders lacked a signature endorsement confirming that he performed the ADT. Moreover, he stated that the JUMPS database showed that the applicant was not paid for the alleged 12 days of ADT in 1994.

In response to the advisory opinion for BCMR Docket No. 2002-172, the applicant argued that to receive credit for a "good year," reservists must perform 12 days of ADT or seek a waiver for the requirement. He alleged that he had a "good year" in 1994 and has never requested a waiver and swore that he had performed the 12 days of ADT shown on the Reserve orders. In addition, the applicant complained that an SOCS he had just received showed only 4,658 cumulative points for his active duty from 1969 to 1981. On prior statements, he had been credited with 4,659 points for this period.

¹ Under Enclosure 1-1 to the Reserve Administration and Training Manual (and its successor, the Reserve Policy Manual) "active duty for training" is a "tour of active duty for Reserve training under orders which provided for automatic reversion to inactive duty status when the specified period of active duty is completed."

In its decision in BCMR Docket No. 2002-172, the Board found that the applicant performed ADT for 15 days from April 1 through 15, 1987; for one day in March 1988; for 6 days from January 22 through 27, 1989; and for 47 days from August 15 through September 30, 2001, for which he had not received credit on his SOCS and/or Reserve annual retirement points statements. The Board also found that since two prior SOCSes in his record showed that the applicant had received 4,659 points for his active duty from 1969 to 1981, the number on his most recent SOCS, 4,658, should be returned to 4,659. The Board ordered the Coast Guard to make these corrections. However, it found that the applicant did not prove that he had performed 12 days of non-consecutive ADT between August 1 and September 30, 1994. Moreover, the Board made no finding or comment about whether the applicant had completed 18 years of active service.

SUMMARY OF THE APPLICANT'S RECORD

On February 10, 1969, the applicant enlisted in the Coast Guard for 4 years. He was absent without leave (AWOL) from 7:25 a.m. December 28, 1970, to 5:50 p.m. December 29, 1970. He was discharged on November 13, 1972, upon completion of 3 years, 9 months, and 3 days of active service and 1 day of "time lost" for the day he was AWOL, which does not count as creditable serve.²

On November 14, 1972, the applicant reenlisted. He was discharged on November 13, 1978, having completed exactly 6 years of active duty during his second enlistment, which gave him a total of 9 years, 9 months, and 3 days of active duty. On November 14, 1978, he reenlisted for 3 years. He was discharged on November 12, 1981. Therefore, his third enlistment comprised 2 years, 11 months, and 29 days of active duty, which added to his prior active duty totaled 12 years, 9 months, and 2 days.

The applicant's first year in the Reserve from November 13, 1981, to November 12, 1982, was not satisfactory for Reserve retirement purposes. However, from November 13, 1982, through November 12, 2001, the applicant received more than 50 points during each anniversary year. His latest SOCS shows that he has accrued more than 31 years, 9 months, and 2 days toward a Reserve retirement pursuant to 10 U.S.C. § 12732.

The applicant's SOCS and Retirement Points Statements show that from December 1982 through March 1986, he performed a total of 7 months and 12 days of ADT (see table below). No DD 214s were issued for these periods of less than 90 days' duration.

On April 15, 1987, the applicant was discharged from a 4 month, 1 day period of active duty. The DD 214 anomalously shows 13 years, 6 months, and 10 days of prior

² Creditable service is calculated in accordance with Appendix C of the Coast Guard Pay and Personnel Manual. Periods of AWOL greater than 24 hours do not count as creditable service. For the purpose of most calculations, one month equals 30 days.

active service, even though his prior periods of active duty totaled only 13 years, 4 months, and 14 days (see table below). Thus, his DD 214 dated April 15, 1987, erroneously includes an extra 2 months and 4 days of active duty that does not appear in any other record. (In addition, the applicant's record contains a photocopy of his April 1987 DD 214 upon which someone has made an erroneous correction by hand which omits the applicant's periods of ADT in the mid 1980s and thus reflects only 12 years, 9 months, and 2 days of prior active service.)

The applicant's SOCS shows that from May 1987 through August 1997, he performed a total of 5 months and 29 days of ADT. No DD 214s were issued for these periods because they were of less than 90 days' duration. On June 30, 1998, the applicant was discharged from a 9 month, 3 day period of active duty. The DD 214 shows 14 years, 7 months, and 14 days of prior active service. However, according to the applicant's SOCS (see table below), he actually had only 14 years, 2 months, and 14 days of prior active service—exactly 5 months less than the amount shown on the DD 214.

The applicant's SOCS shows that in August and September 1998, he performed 1 month and 7 days of ADT. No DD 214 was issued for this short period.

From October 1, 1998, through June 30, 2001, the applicant performed 2 years and 9 months of active duty. The DD 214 he received upon discharge shows 15 years, 5 months, and 17 days of prior active duty. However, he actually had 15 years, 00 months, and 24 days of prior active duty (see table below).

Regarding the applicant's total active duty toward a regular retirement, his SOCS shows the following active duty up through 2001, when he alleges he was wrongfully separated with more than 18 years of active duty:

Start Date	End Date	Accrued Days of Active Duty			Subtotals	Running Subtotal
		Years	Months	Days		
2/10/69	12/27/70	1	10	18		
12/29/70	11/12/81	10	10	14	12 y, 9 m, 2 d	12 y, 9 m, 2 d
12/6/82	3/4/83	0	2	29		
1/3/84	3/2/84	0	2	0		
1/6/85	2/22/85	0	1	17		
2/24/85	3/8/85	0	0	13		
2/23/86	3/7/86	0	0	13	7 m, 12 d	13 y, 4 m, 14 d
12/15/86	4/15/87	0	4	1	4 m, 1 d	13 y, 8 m, 15 d
10/19/87	12/18/87	0	2	0		
2/8/88	2/19/88	0	0	12		
3/5/88	3/5/88	0	0	1		
11/22/88	11/27/88	0	0	6		
1/22/89	1/27/89	0	0	6		
2/12/90	2/23/90	0	0	12		
1/14/91	1/25/91	0	0	12		
9/9/91	9/20/91	0	0	12		
11/2/92	11/13/92	0	0	12		
2/21/95	3/4/95	0	0	12		
9/18/95	9/22/95	0	0	5		

9/25/95	9/29/95	0	0	5		
9/16/96	9/21/96	0	0	6		
11/12/96	11/17/96	0	0	6		
12/2/96	12/7/96	0	0	6		
8/14/97	8/14/97	0	0	1		
8/18/97	8/18/97	0	0	1		
8/25/97	8/26/97	0	0	2		
8/28/97	8/29/97	0	0	2	5 m, 29 d	14 y, 2 m, 14 d
9/28/97	6/30/98	0	9	3	9 m, 3 d	14 y, 11 m, 17 d
8/24/98	9/30/98	0	1	7	1 m, 7 d	15 y, 0 m, 24 d
10/1/98	9/30/00	2	0	0		
10/1/00	6/30/01	0	9	0	2 y, 9 m, 0 d	17 y, 9 m, 24 d
8/14/01	9/30/01	0	1	17	1 m, 17 d	17 y, 11 m, 11 d
Rough Totals		13 y	51 m	251 d		
Equivalent Totals		13 y	4 y, 3 m	8 m, 11 d		
Combined Total		17 y	11 m	11 d		

Following his release from active duty in 2001, the applicant served one more day of ADT. On February 1, 2004, he was transferred to the Retired Reserve.

VIEWS OF THE COAST GUARD

On April 20, 2005, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny the applicant's request. He attached to and adopted as part of his advisory opinion a memorandum on the case prepared by the Coast Guard Personnel Command (CGPC) dated March 3, 2005.

CGPC stated that following the Board's decision in BCMR Docket No. 2002-172, which was issued on November 3, 2003, the corrections were made and a corrected SOCS was sent to the applicant. That SOCS, dated January 2, 2004, shows that the applicant had accrued 17 years, 11 months, and 11 days of active duty service. CGPC further stated that a more recent SOCS, dated February 11, 2005, shows that the applicant had accrued one additional day of active duty, for a total of 17 years, 11 months, and 12 days of active duty service. Therefore, CGPC alleged, the applicant's claim that he had over 18 years of active duty and was wrongfully separated in 2001 is erroneous. CGPC stated that under 10 U.S.C. § 12686, "a member of a Reserve component who is on active duty (other than for training) and is within two years of becoming eligible for retired or retainer pay under a purely military retirement system, may not be involuntarily released from that duty before he becomes eligible for that [retirement] pay, unless the release is approved by the Secretary." However, CGPC argued, the applicant did not have 18 years when he was released from active duty in 2001, was not entitled to remain on active duty, and is not entitled to be reinstated on active duty.

The JAG concluded that "even with the corrections made to his record in BCMR Docket No. 2002-172, Applicant still does not have the 18 years [of] active service he claims he has." The JAG pointed out that even if the Board had granted the applicant the 12 days of nonconsecutive ADT in 1994 (which were denied because he had no endorsed orders and received no pay for them), his total active duty would still be less than 18 full years.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 21, 2005, the Chair sent a copy of the views of the Coast Guard to the applicant and invited him to respond within 30 days. He was granted an extension and submitted a response to the advisory opinion on July 5, 2005.

The applicant submitted copies of his DD 214s dated June 30, 1998, and June 30, 2001. He argued that they clearly document that he has more than 18 years of active duty. He alleged that his total active duty in 18 years, 2 months, and 17 days.

The applicant also submitted copies of Retirement Points Statements, which he alleged are still incorrect in that they show "the addition of only 19 of the 176 days to

his record.” He asked that his record be corrected by adding 157 days of active duty. The applicant further alleged that the Coast Guard never increased the number of days he received as a member of the regular Coast Guard from 4,658 to 4,659 as ordered in BCMR Docket No. 2002-172. In support of these allegations, he submitted a copy of his latest Retirement Points Statement, which shows that following the Board’s decision, the Coast Guard corrected it by adding 15 days of ADT to his anniversary year ending on November 12, 1987; 1 day of ADT to his anniversary year ending on November 12, 1988; and 6 days of ADT to his anniversary year ending on November 12, 1989. In addition, it shows 278 days of ADT for the anniversary year ending on November 12, 2001, which includes the 47 days from August 15 through September 30, 2001. It also shows that he has been credited with 686 days of active duty for his service from his enlistment on February 10, 1969, through December 27, 1970, and with 3,972 days for his active duty from December 29, 1970, through November 12, 1981—skipping the period he went AWOL on December 28 and 29, 1970. The new Retirement Points Statement also shows that the applicant is now being credited with only 59 days of ADT for the anniversary year ending on November 12, 1984, instead of the 60 days shown on past statements; and with only 59 days of ADT for the anniversary year ending on November 12, 1997, instead of the 63 days shown on past statements.

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 for reconsideration was filed within two years of the date of the decision in BCMR Docket No. 2002-172 and was therefore timely in accordance with 33 C.F.R. § 52.67(e).

2. The Chair granted reconsideration because in its decision in BCMR Docket No. 2002-172, the Board did not address the applicant’s request for a determination that he had completed 18 years of active duty in 2001 and so should have been retained on active duty until he could retire upon completion of 20 years, pursuant to 10 U.S.C. § 12686. The applicant alleged that in that prior decision the Board recognized that he had completed 18 years of active duty in 2001. However, scrutiny of the decision reveals no such recognition, either explicit or implicit.

3. In his application in BCMR Docket No. 2002-172, the applicant proved with endorsed orders that his Statement of Creditable Service (SOCS) did not reflect all of the ADT he had performed. However, as CGPC pointed out, even with his SOCS corrected to include those periods of ADT, the applicant’s total active service upon his release from active duty in 2001 still totaled less than 18 full years of active duty. His

corrected SOCS shows 17 years, 11 months, and 11 days of active service as of September 30, 2001. He has not submitted any endorsed orders documenting additional ADT to prove that the new SOCS is inaccurate. Therefore, the Board finds that the applicant was not entitled to retention under 10 U.S.C. § 12686, and his release from active duty upon the termination of his orders was not wrongful. Because the applicant has not proved that the Coast Guard committed any error or injustice in failing to retain him on active duty to complete 20 years for retirement, he is not entitled to reinstatement on active duty or to the related relief he has requested.

4. The applicant pointed out that his most recent DD 214, which was issued upon his release from active duty on September 30, 2001, shows 15 years, 5 months, and 17 days of prior active duty, which, when added to the 2 years and 9 months of active duty covered by the DD 214, erroneously indicates that he had completed more than 18 years of active service. The DD 214 reflects approximately 5 more months of prior active service than the applicant had actually performed. However, a member's creditable service toward retirement is recorded on the SOCS, and his eligibility for retirement is determined thereby—not by his discharge papers. The applicant has not submitted anything to show that his current SOCS is inaccurate or that he actually performed the approximately 5 extra months of active service indicated by the DD 214.

5. The applicant alleged that his current Retirement Points Statement shows “the addition of only 19 of the 176 days to his record.” He asked that his record be corrected by adding 157 days of active duty. He did not specify what days he believes that he performed ADT that are not already shown on his SOCS and his Retirement Points Statement. In the decision for BCMR Docket No. 2002-172, the Board did not order the Coast Guard to add 176 days of active duty to the applicant's record, and he has not proved that he is entitled to them. Instead, the Board ordered the Coast Guard to correct the applicant's SOCS and Retirement Points Statement to ensure that they reflect the following periods of creditable service:

a. 15 days of creditable service from April 1, 1987 to April 15, 1987. The Board's order added these 15 days to his Retirement Points Statement and his SOCS. The record shows that the Coast Guard made these corrections by raising his total ADT points for the anniversary year from 132 to 147 on his Retirement Points Statement, and by raising the total number of days of creditable service for the period December 15, 1986, through April 15, 1987, from 107 to 122 on his SOCS.

b. 1 day of creditable service in March 1988. The record shows that the Coast Guard has properly added this 1 day to the applicant's SOCS and to his Retirement Points Statement, thereby raising his total ADT points for the anniversary year from 48 to 49.

c. 6 days of creditable service from January 22 through 27, 1989. The record shows that the Coast Guard properly added these 6 days to the applicant's SOCS and to his Retirement Points Statement, thereby raising his total ADT points for the anniversary year from 6 to 12.

d. 47 days of creditable service from August 15, 2001, through September 30, 2001. The applicant's current SOCS and Retirement Points Statement now reflect these 47 days of creditable service.

6. The applicant also pointed out that his Retirement Points Statement still shows that he received 4,658 instead of 4,659 points as a member of the Coast Guard from February 10, 1969, through November 12, 1981, contrary to the Board's order in BCMR Docket No. 2002-172. Under Article 8.C.3.b. of the Reserve Policy Manual, a member must be credited with one point for each day of active service in a regular or Reserve component. The one-point discrepancy on the applicant's recent Retirement Points Statement is attributable to his approximately 34-hour period of being AWOL on December 28 and 29, 1970, which does not count as creditable service. The record indicates that this period of being AWOL was not properly subtracted from the applicant's record in prior Retirement Points Statements, which showed no break in service from February 10, 1969, through November 12, 1981, and which the Board relied on in its prior decision. The Board's calculations show that the period from February 10, 1969, through December 27, 1970, is exactly 686 days, and that the period from December 29, 1970, through November 12, 1981, is exactly 3,972 days, for a total of 4,658 days. Therefore, the Board concludes that the applicant's current Retirement Points Statement is correct in this regard. Although the Board previously ordered that the number be changed to 4,659, that order was based on erroneous records that did not take into account the applicant's period of being AWOL on December 28 and 29, 1970. Therefore, although the Coast Guard should have complied with the Board's order in BCMR Docket No. 2002-172 or requested an amendment of the order in accordance with 33 C.F.R. § 52.73, the Board will not order the Coast Guard to complete this part of the prior order, as it was based on erroneous records that counted the applicant's 34-hour period of AWOL as creditable service.

7. The applicant's Retirement Points Statement now shows that he is being credited with only 59 days/points of ADT for the anniversary year ending on November 12, 1984, instead of the 60 days/points shown on past statements; and with only 59 days of ADT for the anniversary year ending on November 12, 1997, instead of the 63 days shown on past statements. The applicant did not complain about these specific changes but they may well be contributing factors in his general complaint about erroneous corrections and uncredited creditable service. Moreover, the changes make his Retirement Points Statement inconsistent with his SOCS, which shows 60 days of ADT in the anniversary year ending on November 12, 1984, and 63 days of ADT in the anniversary year ending on November 12, 1997. The applicant is entitled to a consistent and

accurate record. With regard to these recent changes to the applicant's Retirement Points Statement, which were not ordered by the Board and are not explained in the record, the Board finds the following:

a. The applicant's SOCS shows that he served on ADT from January 3, 1984, to March 2, 1984, which is calculated on the SOCS as exactly 2 months. The year 1984 was a leap year, so February had 29 days. Therefore, the period includes exactly 60 days. His Retirement Points Statement should be corrected to be consistent with his SOCS in showing 60 days/points for that anniversary year.

b. The applicant's SOCS clearly shows that he completed 63 days of active service—not 59—between November 13, 1996, and November 12, 1997. Therefore, his Retirement Points Statement should be corrected to be consistent with his SOCS in showing 63 days/points for ADT during that anniversary year.

8. Several of the DD 214s in the applicant's record are clearly erroneous as they reflect amounts of prior active service that are inconsistent with his SOCS. However, he has not asked the Board to correct them and he may not consider such corrections to be in his favor. Therefore, the Board will take no action with respect to the erroneous DD 214s at this time.

9. Accordingly, the applicant should be granted partial relief by correcting his Retirement Points Statement to be consistent with his SOCS in showing 60 points for his 60 days of ADT in the anniversary year ending on November 12, 1984; and 63 points for 63 days of ADT in the anniversary year ending on November 12, 1997.

ORDER

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

The Coast Guard shall correct his Retirement Points Statement to be consistent with his Statement of Creditable Service in showing 60 points (instead of 59) for his 60 days of ADT in the anniversary year ending on November 12, 1984; and 63 points (instead of 59) for his 63 days of ADT in the anniversary year ending on November 12, 1997.

The Coast Guard shall issue him a corrected Retirement Points Statement reflecting these corrections.

No other relief is granted.

