

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-201



FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on June 26, 2019, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated November 4, 2022, 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 Reserve Port Security Specialist (PS3/E-4) who was honorably discharged on May 31, 1995, asked the Board to correct his record by increasing the number of retirement points he received upon his separation from the Coast Guard Reserve so that he can qualify for a VA loan.

According to the applicant, he participated in yearly musters and sea bag inspections up to the time of his discharge which should have earned him an additional one retirement point per year, but he was not given credit for those years he participated. The applicant alleged that his retirement points were not updated after 1990.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard Reserves on June 1, 1987.

On June 10, 1991, at the request of the applicant, the Coast Guard transferred him from the Selected Reserve to the Individual Ready Reserve (IRR).

On May 31, 1995, the applicant was honorably discharged from the Coast Guard Reserve after the completion of his eight-year military service obligation.

A Computation of Retirement Points Statement in his record shows that the applicant had performed three years of satisfactory service toward a Reserve retirement by earning at least 50 retirement points and that he had earned a total of 293 points in eight years. Specifically, it shows that he performed drills and annual trainings during his first three anniversary years and earned 69, 98, 51 retirement points in the anniversary years ending on May 31 in 1988, 1989, and 1990, respectively. This statement further shows that in his anniversary years ending on May 31 of 1991, 1992, 1993, 1994, and 1995, the applicant received just the 15 points for membership in the Reserve and no points for drills, annual training, or correspondence courses. His receipt of only membership points is also reflected on his annual Retirement Points Statements, which were mailed to him.

VIEWS OF THE COAST GUARD

On February 7, 2020, a judge advocate (JAG) of the Coast Guard submitted a memorandum in which she adopted the facts and analysis provided by the Commanding Officer of the Coast Guard Personnel Service Center (PSC) and requested that the Board accept PSC's comments as the Coast Guard's advisory opinion. PSC recommended the Board deny relief in this case. PSC argued not only that was the application untimely, but also that the applicant failed to show that the Coast Guard committed an error or injustice.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 5, 2020, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. No response was received.

APPLICABLE LAW AND POLICY

Article 1-B-2.b. of the Coast Guard Reserve Administration and Training Manual (RATMAN) in effect in 1995, provides the necessary guidance on Individual Ready Reserve (IRR). It states the following, in relevant part:

Individual Ready Reserve. The Individual Ready Reserve consists of unpaid reservists who have no obligation to participate in the Selected Reserve.

1. Most members of the IRR have completed their required active service obligation but must remain on the Reserve rolls to complete their military obligation.
2. IRR members may voluntarily participate in Reserve training programs without pay.
3. IRR members are obligated to maintain physical standards, to keep the district commander advised of their current address, and to respond to official correspondence.

Article 8-C-10 of the RATMAN states the following regarding Reserve Retirement Point Statements:

The Reserve Retirement Point Statement provides the number of points earned during the last anniversary year and the cumulative total for a member's complete military career.

It is distributed by HRSIC approximately three months following the end of the reservist's anniversary year. The three-month deferred publication allows for duty and correspondence courses to be updated in the computer database. Reservists who find discrepancies on their Reserve Retirement Point Statement shall send a request for correction with supporting documents via the chain of command to HRSIC(cst). HRSIC shall review and resolve discrepancies if the problem can be identified. In cases that cannot be resolved, HRSIC shall provide a meaningful endorsement with any additional supporting documents available and forward the request to CGPC-rpm for resolution.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on the applicant's military record and submissions, the Coast Guard's submission and applicable law:

1. The Board has jurisdiction over this matter under 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in his Coast Guard military record. The Board finds that the applicant has exhausted his administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued.

2. The application filed by the applicant was not timely. To be timely, an application for the correction of a military record must be submitted to the Board within three years after the alleged error or injustice was discovered.¹ The record shows that the applicant received annual notices of his accumulated Reserve retirement point, which show that he stopped performing drills and annual training, transferred to the IRR in 1991, and received just membership points for the last five years of his military service obligation. In accordance with Chapter 8-C-10 of the RATMAN then in effect, Reserve Retirement Points Statements were mailed annually to the reservist so that he could review and dispute the totals. Therefore, the preponderance of the evidence shows that the applicant would have known of the alleged error in his record before his discharge, 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 "analyzing both the reasons for the delay and the potential merits of the claim based on a cursory review"³ to determine whether the interest 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 Pursuant to these requirements, the Board finds the following:

a. Regarding his delay in filing his application, the applicant failed to explain what caused his delay in applying to the Board for relief. The Board finds that the

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).

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

applicant's request for consideration is not persuasive because he failed to show that anything prevented him from seeking correction of the alleged error or injustice more promptly.

b. A cursory review of the merits of this case shows that the applicant's claim regarding his retirement points lacks potential merit. The applicant received annual Reserve Retirement Point Statements, which clearly showed the number of Reserve retirement points the applicant had accumulated throughout the previous year and which did not show any muster or sea bag inspection points after he transferred to the IRR in 1991. In addition, on August 14, 1995, the applicant received a Computation of Retirement Point Credit Form which also provided the total number of Reserve Retirement Points the applicant had accumulated over his time in the service. There are no records showing that the applicant participated in any musters or sea bag inspections after entering the IRR on June 10, 1991, and the record is presumptively correct.⁵ Pursuant to Chapter 8-C-10 of the RATMAN then in effect, the applicant was entitled to contest the number of points shown on these statements and there is no evidence that he did so.

4. Accordingly, with respect to the applicant's request for updated Reserve retirement points, the Board will not excuse the application's untimeliness or waive the statute of limitations to conduct a more thorough review of the merits. The applicant's request to add additional retirement points to his record should therefore be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁵ 33 C.F.R. § 52.24(b).

ORDER

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

November 4, 2022

[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

[REDACTED] [REDACTED]
[REDACTED] [REDACTED]