

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-195

██████████
██████████

FINAL DECISION

This proceeding was conducted under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. After receiving the applicant's completed application on July 29, 2014, the Chair docketed the application and assigned it to ██████████ to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated May 8, 2015, 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 asked the Board to amend block 12.a. of his DD Form 214 so that his active duty service dates would include the time spent as a cadet at the United States Coast Guard Academy. The applicant was enrolled at the Academy from July 2, 2001, through May 18, 2005. He was commissioned an officer on May 18, 2005, and served on active duty until he was honorably discharged on January 1, 2011.

The applicant stated that he did not become aware until 2014 that his time as a cadet at the Academy was unaccounted for on his DD 214. It was not until he was advised by the Office of Personnel Management (OPM) upon submitting his package for retirement buy-back for a federal civilian retirement that he realized that his DD 214 was incorrect. The applicant stated that he contacted the Coast Guard, OPM, the Department of Veterans' Affairs, and the National Personnel Records Center (NPRC), and none of the agencies have any record of him being in the military prior to May 18, 2005. The applicant claimed that he must be able to prove honorable service during the time period he was enrolled at the Academy with a valid DD 214.

The applicant argued that pursuant to 5 U.S.C. § 2108(1)(c) and 38 U.S.C. § 101(21)(D), the Coast Guard failed to correctly classify his time served while at the Academy as active duty service. In support of his application, the applicant submitted the following documents:

- CG-9556 (Acceptance and Oath of Office), dated July 2, 2001
- DD-1172 (DEERS Enrollment), dated July 5, 2001

- DD-1351-2 (Travel Voucher), 3 pages, dated July 9, 2001 – for travel to report to U.S. Coast Guard Academy.
- DD-214 for separation date of January 1, 2011

SUMMARY OF THE RECORD

On July 2, 2001, the applicant was appointed as a cadet, and he attended the USCG Academy as a full-time student until his graduation on May 18, 2005. The applicant's DD-214 shows that he entered active duty upon his commissioning on May 18, 2005, and that upon his discharge on January 1, 2011, he had served 5 years, 7 months, and 15 days on active duty.

VIEWS OF THE COAST GUARD

On December 29, 2014, the Judge Advocate General (JAG) submitted an advisory opinion recommending that the Board deny relief in this case in accordance with the findings and analysis provided in a memorandum submitted by the Commanding Officer, Coast Guard Personnel Service Center (PSC).

PSC contended that the applicant is mistaken in his belief that pursuant to 10 USC § 971, his time as a cadet at the Academy is creditable for computing length of service. The applicant's DD 214 accurately states that he entered active duty on the date he was commissioned as an ensign on May 18, 2005, the day he graduated from the Academy. Therefore, the applicant's DD 214 is correct and should not be amended to include his time as a cadet, as this is not authorized by 10 USC § 971. PSC also noted that their recommendation to the JAG aligns with BCMR Final Decision 2014-028.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 31, 2015, the applicant submitted a response to the Coast Guard advisory opinion in which he disagreed with the JAG's and PSC's conclusions, as he understood them. The applicant provided the following additional statement:

I would like it to be noted that I disagree with the views of the Coast Guard. I completely understand that Title 10 USC Section 971 "prohibits counting service for any purpose..." I also noted that the Board has reviewed the conflicting law 5 USC Section 2108(1)(c) and 38 USC Section 101(21)(D), which clearly states that the term "active duty" specifically applies to service as a cadet at the United States Coast Guard Academy. I would request further explanation of why 38 USC Section 101(21)(D) does not translate to my time at the Academy being considered active duty time, as stated in this law.

Most importantly, I have noted that in neither the Coast Guard's advisory opinion nor the Board's previous decision on a similar case (Docket number 2014-028), is there a discussion of the National Defense Authorization Act (NDAA) of 2008. It seems as though Congress has specifically and definitively addressed this topic in Section 1115 of the NDAA of 2008. This act was later codified as Public Law 110-181 and amended Title 5 USC.

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In order to comply with federal law, I am requesting the Coast Guard, via the BCMR, correct my DD-214 to accurately capture the timeframe of July 2, 2001 and May 18, 2005. In my current situation, this period of time has not been captured in any form, meaning that I cannot adequately confirm or verify to a potential employer that this active duty service was completed in an

honorable fashion. In fact, the absence of documentation for this period of service could potentially raise a “red flag.” This may result in severe personal and professional repercussions and adverse impacts to myself and my family at any point, and possibly repeatedly, over the rest of my life. It is this fact that compels me to ask the Board to excuse the untimeliness of my application in the interest of justice in accordance with 10 USC Section 1552(b) and issue a waiver to the statute of limitations and to grant me relief and correct my DD-214.

Moreover, the amount of time my application was over the three year statute of limitations is only a matter of several months. Previous case law holds that the length of the delay should be taken into account when deciding to grant a waiver. Additionally, I discovered the error when contacting my personnel office in March of 2014 (three years and two months after receiving my DD-214), and immediately began seeking avenues to have the error corrected. I contacted the Coast Guard Personnel Service Center on multiple occasions, the Coast Guard Academy, the Veteran’s Administration, and the National Personnel Records Center. I exhausted all of these avenues before proceeding with my application to the BCMR, adding to my delay. I offer that these actions should be taken into consideration by the Board when granting a waiver of the statute of limitations, as I was trying to work through the lowest level possible to have the error corrected before proceeding to the BCMR. I am able to document all of my correspondence with these entities.

I should note that the VA and the NPRC have no record of my military service from July 2, 2001 through May 18, 2005, further illustrating the necessity of having this error corrected and having a way to demonstrate that my active duty service, as it is categorized by multiple federal laws, is properly documented as honorable in nature. I would like to note that I am not requesting this correction in order to apply for any military benefits or to use toward any sort of military retirement under Title 10. I am requesting my DD-214 be corrected to have a record of the entirety of my active duty service in accordance with multiple federal statutes, most notably 5 USC Section 8331(13).

APPLICABLE LAW

Title 10 U.S.C.

§ 971. Service credit: officers may not count service performed while serving as cadet or midshipman.

(a) **Prohibition on Counting Enlisted Service Performed While at Service Academy or in Navy Reserve.**—The period of service under an enlistment or period of obligated service while also performing service as a cadet or midshipman or serving as a midshipman in the Navy Reserve may not be counted in computing, for any purpose, the length of service of an officer of an armed force or an officer in the Commissioned Corps of the Public Health Service.

(b) **Prohibition on Counting Service as a Cadet or Midshipman.**—In computing length of service for any purpose, service as a cadet or midshipman may not be credited to any of the following officers:

- (1) An officer of the Navy or Marine Corps.
- (2) A commissioned officer of the Army or Air Force.
- (3) An officer of the Coast Guard.
- (4) An officer in the Commissioned Corps of the Public Health Service.

Title 5 U.S.C.

§ 8331. Definitions

For the purpose of this subchapter--

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- (13) “military service” means honorable active service—
- (A) in the armed forces;

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and includes service as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy, but does not include service in the National Guard except when ordered to active duty in the service of the United States or full-time National Guard duty (as such term is defined in section 101(d) of title 10) if such service interrupts creditable civilian service under this subchapter and is followed by reemployment in accordance with chapter 43 of title 38 that occurs on or after August 1, 1990;

§ 2108. Veteran; disabled veteran; preference eligible.

For the purpose of this title —

(1) “veteran” means an individual who—

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(D) served on active duty as defined by section 101(21) of title 38 in the armed forces for a period of more than 180 consecutive days any part of which occurred during the period beginning on September 11, 2001, and ending on the date prescribed by Presidential proclamation or by law as the last date of Operation Iraqi Freedom.

Title 38 U.S.C.

§ 101. Definitions

For the purposes of this title —

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(21) The term “active duty” means—

(D) service as a cadet at the United States Military, Air Force, or Coast Guard Academy, or as a midshipman at the United States Naval Academy.

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 submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
2. Under 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22, an application to the Board must be filed within three years after the applicant discovers the alleged error or injustice. Although the applicant stated that he was unaware that his time served as a cadet at the Academy counted as active duty service, he received his DD 214 in January 2011, knew the period of service it documented, and did not question the alleged error until March 2014 when he submitted his package for retirement buy-back for a federal civilian retirement. The preponderance of the evidence shows that the applicant was aware upon his discharge in January 2011 that he was being credited with active duty service beginning on May 18, 2005, his graduation date from the Academy and not before. Therefore, the Board finds that the application is untimely.
3. 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).

4. The applicant argued that it is in the interest of justice to consider his application because the alleged error on his DD 214 has hindered his ability to meet the necessary requirements for a retirement buy-back for a federal civilian retirement. The applicant also stated that he was not aware until 2014 that time served as a cadet counted as active duty service and feels that the Coast Guard is not abiding by federal law by not counting his time at the Academy as creditable service.

5. A cursory review of the applicant’s record shows that pursuant to 10 U.S.C. § 971, the applicant’s active duty was correctly recorded on his DD 214 and that his time at the Academy does not count as active duty service with regard to his DD 214. The applicant asked why his time at the Academy does not count as active duty service given the language in 5 U.S.C. §§ 2108(1)(c) and 8331(13) and 38 U.S.C. § 101(21)(D). As the language of those statutes shows, however, the terms therein apply only “for the purpose of this title”—i.e., Title 5 or Title 38 of the United States Code (U.S.C.)—and, even more narrowly, “for the purpose of this subchapter”—Subchapter III, “Civil Service Retirement,” in Chapter 83, Subpart G, Part III of Title 5 U.S.C. Title 5 contains the personnel laws governing federal civilian employees and retirees. Title 38 governs the Department of Veterans Affairs. The Armed Forces are governed by Title 10, however, and § 971 of Title 10 clearly prohibits the Coast Guard from counting an officer’s time spent as a cadet at the Academy as active duty service for any purpose. Hence, the applicant’s assertion that his time at the Academy should be documented as active duty on his DD 214 is incorrect. There is no evidence that his date of entry on active duty on his DD 214 is erroneous or unjust.

6. The applicant stated that he needs his DD 214 to reflect his time at the Academy as active service because he has to prove that he attended the Academy so that his time there can be counted for federal civil retirement purposes pursuant to 5 U.S.C. § 8331(13). Because, under 10 U.S.C. § 971, a former U.S. military officer’s DD 214 cannot reflect the officer’s time at a military service academy, the applicant cannot possibly be the first former military officer who must use documentation other than a DD 214 to prove his attendance at a service academy to the DVA or OPM. The Board recommends that the applicant contact OPM or the Academy itself to find out how time at the Academy may be documented since it cannot legally be documented on an officer’s DD 214.

7. Accordingly, based on the record before it, the Board finds that the applicant’s request for correction of his DD 214 cannot prevail on the merits. Therefore, the Board will not excuse the application’s untimeliness or waive the statute of limitations. The applicant’s request should be denied.

ORDER

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

May 8, 2015

