

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-138

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

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 after receiving the applicant's completed application on May 4, 2009, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated December 18, 2009, 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 correct his discharge form DD 214 to reflect the fact that on February 27, 1993, he was released from active duty (RELAD) into the Reserve instead of being discharged. The applicant stated that he was RELAD into the Individual Ready Reserve (IRR) upon his separation from active duty. However, because this fact is not shown on his DD 214, the U.S. Army, in which he is now serving on active duty, is seeking a "fifteen-year overpayment" from him based on an alleged miscalculation of his time in service.

SUMMARY OF THE RECORD

On May 16, 1988, the applicant signed a Statement of Understanding in which he obligated himself to serve for eight years in either the Coast Guard or the Coast Guard Reserve. Also on May 16, 1988, the applicant signed a four-year contract enlisting on active duty in the regular Coast Guard. The contract states that his military service obligation was incurred that day and would be completed on May 15, 1996, eight years later. A print-out from the Coast Guard's pay database also shows that his "expected loss date" was May 15, 1996.

The applicant's DD 214, however, bears "NA" (not applicable) notations in block 6, which is supposed to show the year, month, and day of his Reserve Obligation Termination Date and the word "Discharged" in block 23, instead of the phrase "Released From Active Duty."

VIEWS OF THE COAST GUARD

On August 19, 2009, the Coast Guard submitted an advisory opinion recommending that the Board correct the applicant's DD 214 to show that he was "Released From Active Duty" in block 23 and the termination date of his military service obligation, May 15, 1996, in block 6. The Coast Guard stated that the applicant incurred an eight-year military service obligation on May 16, 1988, and was placed in the IRR upon his release from active duty on February 27, 1993.

RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 1, 2009, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to submit a response within 30 days. No response was received.

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 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, or reasonably should have discovered, the alleged error or injustice. The applicant received his DD 214 in 1993 and should have noticed the errors at that time. Therefore, his 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. Because the applicant's DD 214 is clearly erroneous and the errors may cause him a financial hardship, the Board finds that it is in the interest of justice to excuse the untimeliness of the application.
4. The applicant's enlistment documents clearly show that he obligated himself to eight years of military service in the Coast Guard or Coast Guard Reserve on May 16, 1988. Therefore, block 6 of his DD 214 should show as the termination date of his military service obligation the date May 15, 1996, rather than "NA", and block 23 should show that he was "Released From Active Duty" on February 27, 1993, rather than "Discharged."
5. Accordingly, relief should be granted.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former SK3 xxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted. The Coast Guard shall correct his DD 214 to show the date May 15, 1996, in block 6 and to show that he was "Released From Active Duty" in block 23.

Julia Andrews

Dorothy J. Ulmer

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*The third member of the Board was unavailable. However, pursuant to 33 C.F.R. § 52.11(b), two designated members constitute a quorum of the Board.