

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-172

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

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 on August 3, 2007, upon receipt of the applicant's completed application, 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 April 10, 2008, 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, who retired from the Coast Guard on October 31, 1998, upon completing more than twenty years of active duty asked the Board to correct his final DD 214 by changing the date of his entry on active duty in block 12a from May 1, 1987, to May 1, 1978. The applicant alleged that he discovered the error on September 14, 2006.

SUMMARY OF THE RECORD

The applicant's original enlistment contract shows that he enlisted on May 1, 1978. After extending his enlistment for four years, he was honorably discharged on April 30, 1987, and issued a DD 214 covering his active duty since May 1, 1978. The pertinent entries in block 12 of this first DD 214 appear in the table below.

12. RECORD OF SERVICE	Year(s)	Month(s)	Day(s)
a. Date Entered AD This Period	78	05	01
b. Separation Date This Period	87	04	30
c. Net Active Service This Period	09	00	00
d. Total Prior Active Service	00	00	00

The applicant reenlisted the day after his discharge, May 1, 1987, and so had no break in service, and he continued serving on active duty, by extending this enlistment, until his

retirement on October 31, 1998. The DD 214 issued upon his retirement covers his service from May 1, 1987, through October 31, 1998. The pertinent entries in block 12 of his final DD 214 appear in the table below.

12. RECORD OF SERVICE	Year(s)	Month(s)	Day(s)
a. Date Entered AD This Period	87	05	01
b. Separation Date This Period	98	10	31
c. Net Active Service This Period	11	06	00
d. Total Prior Active Service	09	00	00

VIEWS OF THE COAST GUARD

On December 13, 2007, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny the applicant's request based on an attached memorandum on the case prepared by the Coast Guard Personnel Command (CGPC). CGPC stated that under COMDTINST M1900.4, block 12a on a DD 214 is supposed to show the "Date Entered Active Duty This Period." Since the applicant's first enlistment from May 1, 1978, through April 30, 1987, is properly documented on his first DD 214, block 12a on his second DD 214 should show the date that he entered a new period of active duty by executing a new enlistment contract. CGPC concluded that the applicant's two DD 214s "accurately capture the time [he] served on active duty with the Coast Guard. His final DD 214 ..., issued on October 31, 1998, includes in item 12d the 9 years of active duty brought forward from his previous DD 214." Therefore, CGPC stated that the applicant's request should be denied.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 18, 2007, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within thirty days. No response was received.

APPLICABLE REGULATIONS

Chapter 1.E. of COMDTINST M1900.4D, the manual for preparing DD 214s, provides the following instructions for completing block 12:

Block 12a. Date Entered Active Duty This Period. Enter the date of entry on active duty.

Block 12b. Separation Date This Period. Enter the effective date of release/discharge. For personnel being retired, enter the last day of active duty in this block and enter the effective date of retirement in block 18, Remarks. ...

Block 12c. Net Active Service This Period. Enter the years, months, and days of service creditable for basic pay purposes for the period from date entered active duty this period (block 12a) through date of separation (block 12b). ...

Block 12d. Total Prior Active Service. Enter the years, months, and days of service creditable for basic pay for all active service prior to the date entered in block 12a. ...

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 section 1552 of title 10 of the United States Code.

2. An application to the Board must be filed within three years after the applicant discovers the alleged error in his record. 10 U.S.C. § 1552. The applicant was issued his final DD 214 in 1998 and knew or should have known at that time that it covered only his final enlistment. Therefore, the Board finds that his application was 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.

4. The applicant stated only that he had discovered the alleged errors recently and did not provide any explanation as to why he did not submit an application sooner.

5. As CGPC stated in the advisory opinion, under COMDTINST M1900.4D, a DD 214 covers only one period of active duty—specifically an enlistment (as extended)—and does not normally cover a member's entire service unless the member enlisted once and never reenlisted. The record shows that the applicant enlisted in 1978 and then was discharged and immediately reenlisted in 1987. The entry and separation dates of this first enlistment are reflected correctly on the first DD 214 he was issued. Likewise, his second and final DD 214 correctly reflects the entry and separation dates for his second and final enlistment, and the nine years of his first enlistment are properly shown in block 12d. Therefore, the Board finds no evidence of any error in block 12 of the applicant's DD 214s. In addition, the Board notes that the applicant has not shown that he has been prejudiced by his two DD 214s. If he believes he has been harmed, he may reapply to the Board and explain what injustice he has suffered.

6. Accordingly, the Board finds it is not in the interest of justice to waive the statute of limitations in this case, and it should be denied because it is untimely and it lacks merit.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of retired MK1 xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is denied.

Dorothy J. Ulmer

Thomas H. Van Horn

Darren S. Wall