

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-148



FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the completed application on June 1, 2018, and prepared the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated March 8, 2019, 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 [REDACTED] in the Coast Guard, asked the Board to correct his Acceptance and Oath of Office to show that he took the oath of office and accepted his appointment as a Coast Guard officer on October 30, [REDACTED] instead of October 20, [REDACTED]. He explained that his DD 214 from the Army states that his last day on active duty in the Army was October 29, [REDACTED] and he cannot legally have been a member of more than one military service at a time. He noted that the date of rank shown on the Acceptance and Oath of Office form is October 30, [REDACTED] and that is the day he began attending the Coast Guard's Direct Commissioning Officer Course. He stated that the error was discovered when his record was being review in preparation for his retirement and it will adversely affect his retired pay calculation. In support of his allegations, the applicant submitted copies of the following documents:

- The applicant's Army DD 214 shows that he entered active duty on September 25, [REDACTED] and that his last day on active duty in the Army was October 29, [REDACTED]
- The applicant's Coast Guard Acceptance and Oath of Office shows that on October 20, [REDACTED] he signed and "accept[ed] this appointment in the United States Coast Guard in the grade of Lt. Junior Grade/O-2 with the rank as such from (date of rank October 30, [REDACTED]

VIEWS OF THE COAST GUARD

On August 6, 2018, a judge advocate of the Coast Guard submitted an advisory opinion in which she recommended that the Board grant alternative relief and adopted the findings and analysis in a memorandum on the case prepared by the Personnel Service Center (PSC).

PSC stated that the applicant's belief that the date of his signature on his Acceptance and Oath of Office put him in two military services at once is incorrect because his acceptance did not go into effect until October 30, [REDACTED] as shown on that form. PSC stated that the applicant's erroneous entry date actually started because he was instructed in his Call to Active Service orders to report on October 29, [REDACTED]. PSC stated that the erroneous date on his Call to Active Service "initiated a domino effect in the applicant's record listing his date of entry into the Coast Guard as 29 October [REDACTED] vice 30 October as documented on [the Acceptance and Oath of Office]." Therefore, PSC stated, the Board should grant alternative relief by directing the Coast Guard to prepare a corrected Statement of Creditable Service that accurately shows his date of entry into the Coast Guard as October 30, [REDACTED].

PSC submitted copies of the following additional documents to support the recommendation for alternative relief:

- "Call to Active Duty; Travel Orders" issued on September 13, [REDACTED] direct the applicant to report for Direct Commission Officer Indoctrination Training and duty involving flight operations by noon on October 29, [REDACTED].
- "DCO Class 2-00 Reporting Instructions" issued on October 2, [REDACTED] advised members of the class to arrive by noon on Sunday, October 29, [REDACTED].
- A "Statement of Creditable Service" issued on March 23, 2001, states that the applicant was discharged from the Army on October 29, [REDACTED] and entered the Coast Guard the same day.
- A print-out from the applicant's records shows that his date of rank was October 29, [REDACTED] contrary to the date of rank on his Acceptance and Oath of Office.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 26, 2018, the applicant responded to the views of the Coast Guard and stated that he has no objection to the recommendation and is excited that the correction will allow him to be credited with his full 26 years of service.

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 was timely filed.¹

2. The applicant alleged that the date of his signature on his Acceptance and Oath of Office is erroneous and causing issues with the calculation of his retired pay. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.² Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."³

3. The applicant's Acceptance and Oath of Office shows that he signed it on October 20, [REDACTED] but with an effective date and date of rank of October 30, [REDACTED]. Although he received orders telling him to report for duty on October 29, [REDACTED] because he was not discharged from the Army until October 29, [REDACTED] he could not become a member of the Coast Guard until the next day.⁴ Therefore, the Board agrees with PSC and the applicant that his other records should be corrected to show that he began active duty in the Coast Guard as a lieutenant junior grade on October 30, [REDACTED] and the Coast Guard should issue him a corrected Statement of Creditable Service with a Coast Guard entry date of October 30, [REDACTED].

(ORDER AND SIGNATURES ON NEXT PAGE)

¹ *Detweiler v. Pena*, 38 F.3d 591, 598 (D.C. Cir. 1994) (holding that, under § 205 of the Soldiers' and Sailors' Civil Relief Act of 1940, the BCMR's three-year limitations period under 10 U.S.C. § 1552(b) is tolled during a member's active duty service).

² 33 C.F.R. § 52.24(b).

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁴ 37 U.S.C. § 205(b) (when computing a member's creditable military service, "[a] period of time may not be counted more than once . . ."); Article 4.B.1.h.3. of COMDTINST M1100.2D, the Recruiting Manual then in effect, states that "[a] selectee who is currently serving on active or reserve duty in another service must be discharged from that service before being commissioned in the Coast Guard or Coast Guard Reserve."

ORDER

The application of [REDACTED], USCG, for correction of his military record is denied, but alternative relief is granted: The Coast Guard shall correct his records to show that he was separated from the Army on October 29, [REDACTED] and entered active duty as a lieutenant junior grade in the Coast Guard on October 30, [REDACTED]. The Coast Guard shall issue him a Statement of Creditable Service reflecting this corrected Coast Guard entry date.

March 8, 2019

