

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-176

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. It was docketed on August 25, 2004, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated May 5, 2005, is 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 include his time as a cadet from September 9, 1952, to May 31, 1956, and to show that he was permanently retired from the Coast Guard on May 19, 1964. Currently, his DD 214 shows that he served on active duty as an officer from June 1, 1956, until July 31, 1959, when he was temporarily retired due to a physical disability. The applicant stated that the correction to his DD 214 would entitle him to reduction in his local taxes because it would show that he served on active duty during the Korean War. He pointed out that he received the National Defense Service Medal for being on active duty during the war. He alleged that he discovered the error on January 5, 2003.

SUMMARY OF THE RECORD

An "Acceptance" form in the applicant's record shows that he was appointed a cadet in the Coast Guard on September 2, 1952, and thereby obligated himself to serve on active duty for four years upon graduation from the U.S. Coast Guard Academy. In September 1955, the applicant fractured his coccyx while playing football at the Academy. This injury was aggravated in January 1956, when he fell on ice.

On May 31, 1956, the applicant graduated from the Academy. On June 14, 1956, he underwent an operation on his lower spine. On October 18, 1956, after recovering from surgery, he was retroactively appointed and received a permanent commission as an ensign in the Coast Guard with a date of rank of June 1, 1956.

In February 1957, while underway on a cutter, the applicant injured his back again and was placed on bed rest for ten days. On December 1, 1957, he was appointed to the rank of lieutenant (junior grade). In February 1958, he was placed on bed rest for six weeks due to lower back pain.

On July 31, 1959, after evaluation by a medical board, the applicant was temporarily retired by reason of physical disability with a forty-percent disability rating. His diagnoses included intervertebral disc syndrome (post-operative with recurring attacks) and limitation of motion in the lower back and thigh.

On May 7, 1964, the Commandant informed the applicant that a medical board had determined that he was permanently disabled and that he would be permanently retired as of May 19, 1964, with a forty-percent disability rating.

VIEWS OF THE COAST GUARD

On January 12, 2005, the Judge Advocate General (JAG) of the Coast Guard recommended that the Board grant partial relief in this case. He based his recommendation on a memorandum on the case prepared by the Coast Guard Personnel Command (CGPC).

CGPC stated that Personnel Instruction 77-56, which was in effect when the applicant graduated from the Academy, provided that cadets were eligible to receive DD 214s to document creditable active service upon graduation from the Academy and acceptance of a permanent commission. Therefore, CGPC recommended that the Board grant relief by ordering the Coast Guard to correct the applicant's record to show that he was issued a DD 214 for his time at the Academy when he accepted his commission.

However, CGPC stated, long-standing policy provides that members are not entitled to receive DD 214s when removed from the temporary disability retired list (TDRL). Therefore, CGPC recommended that the Board deny the applicant's request that his time on the TDRL be documented by a DD 214.

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On January 12, 2005, the Chair sent the applicant a copy of the JAG's advisory opinion and invited him to respond within thirty days. On February 15, 2005, the applicant's response was received. He stated that he accepted the recommendation in CGPC's memorandum.

APPLICABLE REGULATIONS

Paragraph 4 of Personnel Instruction 77-56 states that the DD 214 "is designed to provide the individual being released, transferred or discharged from active duty with documentary evidence of active military service." Paragraph 5.a.(2) provides that officers are entitled to a DD 214 upon "separation from an active duty status." Paragraph 5.a.(3) provides that cadets are entitled to a DD 214 "when separated prior to completion of training, and upon acceptance of permanent commission."

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. 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(b). The applicant knew or should have known by the end of May 1964 that he did not have a DD 214 documenting his years as a cadet or his time while temporarily retired. Therefore, although he apparently did not realize the importance of having such documentation until January 2003, his application was untimely.

3. Pursuant to 10 U.S.C. § 1552(b), the Board may waive the three-year statute of limitations if it is in the interest of justice to do so. To determine whether it is in the interest of justice to waive the statute of limitations, the Board should conduct a cursory review of the merits of the case and consider the reasons for the delay. *Dickson v. Sec'y of Defense*, 68 F.3d 1396 (D.D.C. 1995); *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992). The delay in this case was apparently caused by the applicant's unawareness of the potential benefit of having his years as a cadet documented by a DD 214. A cursory review of the merits of this case indicates that in 1956, cadets who accepted permanent commissions as officers were entitled to receive DD 214s documenting their time at the Academy. Therefore, the Board finds that it is in the interest of justice to waive the statute of limitations in this case.

4. Paragraph 5.a.(3) of Personnel Instruction 77-56 provided that in 1956, Coast Guard cadets were entitled to receive DD 214s documenting their time at the Academy "upon acceptance of permanent commission." The record indicates that in October 1956, after he recovered from surgery, the applicant accepted a permanent commission retroactive to June 1, 1956. Therefore, the Board agrees with the Coast

Guard that the applicant is entitled to receive a DD 214 covering his time at the Academy.

5. Pursuant to paragraph 4 of Personnel Instruction 77-56, the purpose of a DD 214 is "to provide the individual being released, transferred or discharged from active duty with documentary evidence of active military service." Paragraph 5.a.(2) provides that officers are entitled to a DD 214 upon "separation from an active duty status." Between July 31, 1959, when the applicant was temporarily retired from the Service due to a physical disability, and May 19, 1964, when he was permanently retired, the applicant did not perform active duty. Therefore, the Board finds that, in accordance with the regulations, he is not entitled to a DD 214 covering that period.

6. Accordingly, the applicant's request should be granted in part by issuing him a DD 214 to document his service as a cadet in accordance with Personnel Instruction 77-56.

ORDER

The application of retired xxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted in part as follows:

The Coast Guard shall issue him a DD 214 to document his service as a cadet at the U.S. Coast Guard Academy from September 1952 through May 1956, in accordance with the provisions of Personnel Instruction 77-56.



