

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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2014-028**

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**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 December 18, 2013, the Chair docketed the application and assigned it to [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 5, 2014, 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 either extend his active duty service dates to include the time spent as a cadet at the USCG Academy or issue an additional DD-214 to cover the period he was at the Academy, July 9, 1990, through May 17, 1994. The applicant stated that he was not aware until 2013 that time served as a cadet counted towards active duty service and he believes that the Coast Guard did him a disservice by not fully explaining his veteran's rights upon his separation from the Coast Guard in 1999. The applicant is currently applying for federal civil service jobs and he alleges that the error in his active duty service dates prevents him from being able to claim a 5-point veteran's preference, thereby impairing his ability to exercise his rights as a veteran.

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.

**SUMMARY OF THE RECORD**

On July 9, 1990, the applicant was appointed as a cadet, and he attended the USCG Academy as a full-time student until his graduation on May 18, 1994. The applicant's DD-214 shows that he entered active duty upon his commissioning on May 18, 1994, and that upon his discharge on July 9, 1999, he had accumulated 5 years, 1 month, and 22 days of active duty service.

## VIEWS OF THE COAST GUARD

On May 8, 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). The JAG also stated the following:

While the Coast Guard, pursuant to 10 U.S.C. § 971, correctly documented the applicant's active duty time in service on his DD-214, the Department of Veterans Affairs has apparently established a different standard for awarding veteran's benefits in 38 U.S.C. § 101(21)(D), as referenced in 5 U.S.C. § 2108(1)(c). The two standards are both statutorily authorized, albeit for different purposes, and are, therefore, not in conflict. The applicant's current, accurate, DD-214, along with the letter from the Coast Guard Academy Registrar indicating the dates he attended the Academy, seem sufficient to meet the VA standard.

PSC stated that the applicant is mistaken in his belief that his time served while at the Academy is creditable for computing length of service. PSC referred to 10 U.S.C. § 971, which specifically states that "in computing length of service for any purpose, service as a cadet or midshipman may not be credited to ... an officer of the Coast Guard."

## APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 13, 2014, the Chair of the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. The BCMR did not receive a response.

## APPLICABLE LAW AND POLICY

***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.

***5 U.S.C. § 2108(1)(c) – Veteran; disabled veteran; preference eligible.***

For the purpose of this title — (1) "veteran" means an individual who—

- (c) served on active duty as defined by section 101(21) of title 38 in the armed forces during the period beginning on August 2, 1990, and ending on January 2, 1992

**38 U.S.C. § 101(21)(D) – Definitions**

For the purposes of this title — (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 alleged that he was unaware until 2013 that his time served as a cadet at the Academy counted as active duty service, he received his DD-214 in 1999, knew the period of service it documented, and did not question the alleged error until he began to apply to federal civil service jobs. 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 impaired his ability to exercise his rights as a veteran by denying him the right to claim a 5-point veteran’s preference. The applicant also alleged that he was not aware until 2013 that time served as a cadet counted as active duty service and feels that the Coast Guard did him a disservice in not fully explaining his rights as a veteran upon separation, and that “this administrative shortcoming compounds [his] employment hardship.” This argument is not compelling because it does not show that anything prevented him from seeking correction of the alleged error or injustice in a timely manner.
5. A cursory review of the record shows that pursuant to 10 U.S.C. § 971, the applicant’s time of service was correctly recorded on his DD-214 and that his time at the Academy does not count towards active duty service with regard to his DD-214. The applicant refers to Title 38 of the U.S.C., which applies to the Department of Veterans Affairs. Title 10 of the U.S.C. applies to the Armed Forces, and § 971 of Title 10 clearly prohibits time spent as a cadet at the Academy from counting as active duty service. Therefore, the applicant was mistaken in his belief that his time at the Academy should be documented as active duty on a DD-214.

6. Based on the record before it, the Board finds that the applicant's request for correction of his length of service cannot prevail on the merits. Accordingly, the Board will not excuse the application's untimeliness or waive the statute of limitations. The applicant's request should be denied.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

**ORDER**

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

September 5, 2014

