

**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. 2014-049**



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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 January 10, 2014, 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 19, 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 amend her DD-214 to show that she entered active duty upon her swearing in at the USCG Academy on [REDACTED], and not upon her graduation from the Academy on [REDACTED]. The applicant stated that other former active duty USCG Academy classmates who are now working as civilians for the Department of Homeland Security and the Coast Guard have updated their DD-214's to show the swearing in date as the date they entered into active duty. The applicant stated that this date impacts the amount of annual and sick time a person can accumulate.

**SUMMARY OF THE RECORD**

On [REDACTED], the applicant was appointed as a cadet, and she attended the USCG Academy as a full-time student until her graduation on [REDACTED]. The applicant's DD-214 shows that she entered active duty upon her commissioning on [REDACTED], and that on the date of her discharge, [REDACTED], she had accumulated 7 years, 1 month, and 11 days of active duty service.

The applicant included in her application a letter from the Registrar's Office of the USCG Academy confirming the applicant's dates of attendance and noting that "[t]he swearing-in date is considered the service computation date per Title 38, U.S.C., as listed in Federal Regulations Volumes 1 and 2."

## VIEWS OF THE COAST GUARD

On July 22, 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).

██████████ stated that the applicant is mistaken in her belief that her 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 July 24, the Chair of the BCMR sent the applicant a copy of the Coast Guard’s views and invited her 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.

***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 stated that she did not discover the alleged error or injustice on her DD-214 until September 9, 2013, she received and signed her DD-214 upon her discharge from the Coast Guard in 2007. The preponderance of the evidence shows that the applicant was aware upon her discharge in [REDACTED] that she was being credited with active duty service beginning on [REDACTED], and not before. Therefore, her 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 stated that she did not discover the alleged error or injustice until September 9, 2013. She provided no reasoning as to why the Board should find it in the interest of justice to consider her application; nor did she explain why she did not question the date of entry on her DD-214 when she received it upon her discharge in [REDACTED].

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 her DD-214 and that her time at the Academy does not count towards active duty service with regard to her DD-214. The applicant submitted a letter from the Registrar’s Office at the USCG Academy, which confirms the applicant’s dates of attendance. The letter also states that “[t]he swearing-in date is considered the service computation date per Title 38, U.S.C., as listed in Federal Regulations Volumes 1 and 2.” Title 38 of the U.S.C. 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 her belief that her 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 her 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 her military record is denied.

September 19, 2014

