

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-066

████████████████████
██████████

FINAL DECISION

This is a proceeding under 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 January 14, 2017, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated August 18, 2017, 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 former lieutenant, asked the Board to correct his discharge form DD 214 to show in block 12.a. that he entered active duty in June 1972, when he became a cadet at the Coast Guard Academy, and to include his four years as a cadet in the calculation of his active duty in block 12.c. on his DD 214. He alleged that his cadet time counts as active duty time under 38 U.S.C. 101.¹ His DD 214 currently shows that he entered active duty upon his commissioning as an officer on June 2, 1976, and that he had served five years and four days of active duty before his discharge on June 6, 1981.

The applicant stated that he discovered the alleged error in December 2016 and that the error is adversely affecting his entitlement to a property tax exemption.

VIEWS OF THE COAST GUARD

On June 19, 2017, the office of the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in this case and adopting the findings and analysis in a memorandum on the case prepared by the Coast Guard's Personnel Service Center (PSC).

¹ Title 38 of the United States Code governs "Veterans Benefits" administered by the Department of Veterans' Affairs. Section 101 of Title 38, "Definitions" states, "For the purpose of this title—... (21) The term "active duty" means—v...(D) service as a cadet at the ... Coast Guard Academy." (Emphasis added.)

PSC noted that the application is untimely because the applicant was discharged in 1981. Regarding the applicant's allegation, PSC stated that under COMDTINST M1900.4B, the manual for preparing DD 214s in effect in 1981, block 12a on a DD 214 should show the date a member entered a period of creditable service for basic pay purposes and that "service while attending a service academy as a cadet is creditable for enlisted members reverted to enlisted status, but in no case is it creditable for a member commissioned as an officer." PSC stated that because the applicant received a commission as an officer after graduating from the Academy on June 2, 1976, his time as a cadet at the Academy should not be included in block 12 of his DD 214.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 29, 2017, 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 LAW

Title 10 U.S.C. § 971, titled "Service credit: officers may not count service performed while serving as cadet or midshipman," states the following in pertinent part:

(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.

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.
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 2016 that his time served as a cadet at the Academy counted as active duty service, he received his DD 214 in 1981, knew the period of service it documented, and did not question the alleged error until he became concerned about a property tax exemption in 2016. 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 is adversely affecting his right to a property tax exemption. 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. The Board finds that the applicant knew at the time that he received and signed the DD 214 that it documented just five years and four days of active duty and should have timely sought correction of the DD 214 if he thought he had performed more than nine years of active duty.

5. A cursory review of the record shows that in accordance with 10 U.S.C. § 971 and COMDTINST M1900.4B, the applicant’s active duty time was correctly recorded in block 12 of his DD 214 because as a commissioned officer, his time at the Academy does not count as active duty for any purpose with respect to the Armed Forces. The applicant referenced the definition of active duty in 38 U.S.C. § 101, but Title 38 governs veterans’ benefits administered by the Department of Veterans’ Affairs, rather than the Armed Forces. Title 10 of the code applies to the Armed Forces, and 10 U.S.C. § 971 clearly prohibits a commissioned officer’s time spent as a cadet at the Academy from counting as active service.

6. Based on the record before it, the Board finds that the applicant’s request for correction 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.

August 18, 2017

