

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-045

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

FINAL DECISION




This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case on December 8, 2006, upon receipt of the application and military records.

This final decision, dated August 16, 2007, 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, who was released from active duty into the Reserve on December 26, 1972, asked the Board to correct his DD 214 to show that he was an SK1/E-6, rather than an SK2/E-5. The applicant alleged that in May 1972, he took and passed the servicewide examination for advancement to SK1, and the advancement list was supposed to become effective on December 1, 1972, but it was delayed for some reason. However, sometime after his release from active duty on December 26, 1972, his Reserve commanding officer advised him that the list had been issued and that the advancements were made retroactive to December 1, 1972.

The applicant stated that although he learned about the retroactive advancements in 1973 and knew that his DD 214 showed his rating to be SK2/E-5, the Board should waive the three-year statute of limitations because he did not learn until recently that he could get his DD 214 corrected and because it would "mean[] a lot to [him] to have [his] DD 214 correct. [He] worked hard to achieve E-6 [in] under 4 years [of] active duty and believe a correction is appropriate."

In support of his allegations, the applicant submitted a copy of the advancement eligibility list, dated November 30, 1972, which shows that he placed in the  spot out of 60 SK2s eligible for advancement to SK1 after the servicewide examination.

SUMMARY OF THE RECORD

On February 17, 1969, the applicant enlisted in the Coast Guard for four years. Achievement Sheets in his record show the following:

- On May 2, 1969, the applicant completed boot camp and advanced from E-1 to E-2.
- On November 26, 1969, the applicant advanced to E-3.
- On October 30, 1970, the applicant completed Storekeeper "A" School and advanced to SK3/E-4.
- On December 1, 1971, the applicant advanced to SK2/E-5.
- On May 22, 1972, he completed the servicewide examination for advancement to SK1/E-6 with a mark of 80%.
- On February 6, 1973, following his release from active duty, the applicant advanced to SK1 as a reservist.

On July 11, 1972, the applicant wrote a letter to his District Commander asking to be released from his enlistment in December 1972 in order to start college in January 1973.

The applicant's DD 214 shows that he was released into the Reserve on December 26, 1972, and that his rating was SK2. He also signed a form acknowledging that he had been advised that he had to reenlist on active duty within three months to "remain in a continuous service status" and that he might "not be reenlisted in [his] present rate (SK2) unless that rate is on the open rate list."

On February 1, 1973, the applicant wrote a letter to the Commander of the Reserve asking to be assigned to the "Active Reserves." He noted that he had been in the [REDACTED] spot on the active duty SK1 advancement eligibility list upon his release from active duty and asked to "be advanced to SK1 upon entering the Active Reserves."

On February 6, 1973, the applicant was assigned to a unit in [REDACTED] in a drill pay status and advanced to SK1. A Pay Adjustment Authorization form dated June 3, 1973, shows that in March and April 1973, he was erroneously paid as an SK2, instead of an SK1, so his pay was adjusted.

On February 16, 1975, the applicant completed his military obligation and was honorably discharged from the Reserve.

VIEWS OF THE COAST GUARD

On May 1, 2007, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case. He adopted the findings and analysis of the case provided in a memorandum by the Coast Guard Personnel Command (CGPC).

CGPC argued that the application should be denied because of its untimeliness. CGPC also stated that under Chapter 1.E. of COMDTINST M1900.4, a DD 214 is supposed to show the

member's pay grade at the time of separation and that the applicant's military records show that he was an SK2 on December 26, 1972, when he was released from active duty. CGPC stated that his allegation that he was or should have been retroactively advanced to SK1 as of December 1, 1972, is not supported in the record, which is presumptively correct.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 3, 2007, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited him to respond within 30 days. No response was received.

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 was released from active duty in December 1972 and knew or should have known that he was released as an SK2/E-5 at that time. Therefore, his application was untimely.
3. Under 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 the Board should waive the statute of limitations because he did not know until recently that his DD 214 could be corrected and because it would mean a lot to him to have the record corrected. The Board does not find these arguments to be compelling. The record contains several communications dated in 1973 about the applicant's advancement to SK1, including a letter from the applicant himself. If the applicant's commanding officer told him that his date of rank should have been made effective as of December 1, 1973, the applicant should have addressed the matter at that time.
5. Under COMDTINST M1900.4, the discharge form DD 214 is supposed to show the member's pay grade at the time of separation, and the applicant's records show that he was still an SK2 on December 26, 1972. Although the applicant placed in the [REDACTED] spot on the active duty SK1 eligibility advancement list following the May 1972 servicewide examination, there is no evidence to support his claim that, after his release from active duty, he became entitled to a retroactive advancement effective as of December 1, 1972. While it is possible that retroactive advancements were made in 1973 and it is possible that even members who had been released

from active duty into the Reserve could be retroactively advanced off an active duty list, the applicant has presented no evidence to support these allegations. Aside from the applicant's own statement, all of the evidence in the record shows that he was advanced to SK1 on February 6, 1973, while a member of the Reserve.

6. Given the lack of evidence supporting the applicant's allegations, the Board finds that it is unlikely that his case can prevail upon the merits. Accordingly, the Board should not waive the statute of limitations in this case. The applicant's request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

