

**DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction of  
Coast Guard Record of:

XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX

BCMR Docket  
No. 2001-124

**FINAL DECISION**

██████████ Chair:

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 commenced on June 18, 2001, upon the Board's receipt of the applicant's complete application for correction of her military record.

This final decision, dated June 20, 2002, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, a former petty officer second class (pay grade E-5) requested that her DD Form 214 (discharge document) be corrected to show that she had served for six or eight years on inactive duty in the Coast Guard Reserve. She stated that she needs her DD Form 214 to show this inactive duty time so that she can join the Air National Guard. The applicant claimed that she discovered the alleged error or injustice in April or May 2001. She failed, however, to explain why she could not have discovered the alleged error any earlier.

On October 23, 1978, the applicant enlisted in the Coast Guard for six years. The applicant's enlistment contract stated that four of her six years of obligated service would be spent on active duty in the regular Coast Guard and two would be spent in the Reserve, unless sooner discharged.

At her request, she was discharged from active duty on July 8, 1982.<sup>1</sup> Upon her discharge, the applicant received a DD Form 214, which indicated that she had served

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<sup>1</sup> The applicant was honorably discharged by reason of convenience of the government due to "parenthood and custody of minor children." She was given the corresponding RE-3B reenlistment code.

on active duty from October 23, 1978 until July 8, 1982. There was no mention of any time served on inactive duty. A discharge severs all ties with the military.

### **Views of the Coast Guard**

On December 27, 2001, the Board received an advisory opinion from the Chief Counsel of the Coast Guard recommending that the board deny relief in this case. The Chief Counsel stated that the application should be dismissed because it was not timely. Alternatively, he argued that the application should be denied because the applicant failed to allege an error or injustice or submit any evidence establishing an error or injustice in her record.

### **Applicant's Response to the Views of the Coast Guard**

On December 31, 2001, a copy of the Coast Guard views was mailed to the applicant for a reply. She did not submit a response.

## **FINDINGS AND CONCLUSIONS**

The Board makes the following findings and conclusions on the basis of the applicant's submissions and military record, the Coast Guard's submission, and applicable law:

1. The BCMR has jurisdiction over this matter pursuant to section 1552 of title 10, United States Code. The application was not timely.
2. To be timely, an application for correction of a military record must be submitted within three years after the alleged error or injustice was or should have been discovered. See 33 CFR 52.22. The applicant was discharged approximately 19 years before she filed her application with the Board. She was given a DD Form 214 at that time which contained no mention of inactive duty credit. She should have discovered the alleged error at that time.
3. The Board may still consider the application on the merits, however, if it finds it is in the interest of justice to do so. The interest of justice is determined by taking into consideration the reasons for and the length of the delay and the likelihood of success on the merits of the claim. See Allen v. Card, 799 F. Supp 158 (D.D.C. 1992).
4. Although the applicant claimed that she did not discover the alleged error until April or May 2001, she did not state why she could not have discovered the alleged error sooner. She merely stated that she needed her DD Form 214 to show six or eight

years of inactive duty so she could join the Air National Guard. The applicant has not provided a persuasive reason for not filing her application sooner.

5. In addition, after a review of the merits of her claim, the Board finds that the applicant has failed to establish by a preponderance of the evidence that her DD Form 214 contains an error or injustice. In fact, she presented no evidence showing that the DD Form 214 was in error or unjust. Without such evidence, the applicant had no chance of success on the merits of her claim.

6. Therefore, the Board finds that it is not in the interest of justice to waive the three-year statute of limitations in this case.

7. Accordingly, the applicant's request for relief should be denied.

**[ORDER AND SIGNATURES ON NEXT PAGE]**

**ORDER**

The application of XXXXXXXXXXXXXXXXXXXXXXX for the correction of her military record is denied.

