

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-060

XXXX, xxxxx
née xxxxxxxx, xxxxxxxxxx
xxxxxxxxxxx, SA (former)

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 after receiving the completed application on December 17, 2008, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 10, 2009, 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 alleged that he is the veteran whose name and Social Security number (SSN) appear below his name in the case caption above. The veteran enlisted in the Coast Guard on October 13, 1986, and was honorably discharged from the Coast Guard due to a physical disability (a knee impairment) two years later, on October 27, 1988. The veteran's military records, which include a birth certificate, show that the veteran was born female and served in the Coast Guard with a female name.¹ The applicant alleged that he is the veteran and that State courts have legally changed his gender to male and his name to the male name shown in the case caption. The applicant asked the Board to correct his military records to reflect his new male name and male gender. He specifically asked to be issued a new discharge form, DD 214, with his new name. (DD 214s do not include a notation of gender.)

In support of his allegations regarding his identity and name, the applicant submitted photocopies of two State court orders. The first, dated October 25, 1995, appears to change the veteran's original first name from a female name to a male name; drop the middle name; and not change the last name. The second, dated August 16, 2005, appears to change the veteran's first name to another male name and to change the last name as well.

¹ The Board notes that persons' names are considered "male" or "female" (or both) because of cultural tradition, not law. This decision labels the names at issue "male" or "female" in accordance with American cultural tradition.

In support of his allegations regarding his gender change, the applicant submitted a photocopy of a notarized letter dated June 27, 2006, from a doctor specializing in plastic and reconstructive surgery, who stated that psychological testing had determined that the applicant's "true gender" is male and that the applicant underwent surgical procedures on June 5, 2006, "to irreversibly alter his anatomy and appearance to that of male." The applicant also submitted a photocopy of a third court order, dated December 5, 2006, which states that the "gender of the petitioner [the applicant] has been changed ... from female to male." The court also ordered the State to issue the applicant a new birth certificate reflecting his new gender.

The applicant also submitted a color photocopy of the first page of his United States passport, issued on July 19, 2007, which shows that his sex is male. None of the official documents submitted by the applicant show the veteran's (or any other) SSN. However, the applicant submitted a photocopy of his new birth certificate, issued on March 8, 2007, which includes the same date, time, and hospital of birth and the same parents' names, ages, and places of birth as appear on the veteran's Coast Guard enlistment documents and on the birth certificate in the veterans' military record. Moreover, it was a single birth (without a twin).

VIEWS OF THE COAST GUARD

On February 10, 2009, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he adopted the findings and analysis provided in a memorandum on the case submitted by Commander, Coast Guard Personnel Command (CGPC), who recommended that the Board deny relief.

CGPC stated that in COMDTINST M1900.4D, the manual for preparing DD 214s, Chapter 1.D.2.a. states that "[a]ll entries [on the DD 214], unless specified otherwise (i.e., block 7a, 7b), are for the current period of active duty only from the date of entry as shown in block 12a through the date of separation as shown in block 12b." Pursuant to this regulation, CGPC stated, the DD 214 was properly prepared with the applicant's legal name at the time.

CGPC stated that the applicant's "legal name changes and gender reassignment became effective after the period of service indicated on the DD 214. Therefore, there is no error or injustice with regards to the applicant's name as it appears on the DD 214 or in [other] official military records."

CGPC stated that the applicant's "military records are correct as the applicant served under his earlier name and gender, not the name and gender that were attained subsequent to discharge. There is no error or injustice with regards to the applicant's records. Records of former servicemembers are filed based upon Social Security Number and the name of the veteran at the time of discharge."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 19, 2009, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within thirty days. The Board received no response.

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 over this matter pursuant to 10 U.S.C. § 1552. The application was timely under 10 U.S.C. § 1552(b) because it was filed within three years of the date the applicant completed, and hence discovered, his legal gender and name changes.

2. The applicant alleged that he is the veteran whose female name and SSN are shown in the case caption above and that his military records are erroneous and unjust² because they do not reflect his new name and gender. The Board begins its analysis in every case by presuming that the disputed information in the veteran's military record is correct, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.³ Absent evidence to the contrary, the Board presumes that Coast Guard officials have carried out their duties "correctly, lawfully, and in good faith."⁴

3. The applicant has proved by a preponderance of the evidence that he is the same person as the veteran whose original, female name and SSN appear in the case caption above. Although he did not submit any official documents showing his SSN, all of the identifying data on his new birth certificate, issued on March, 8, 2007, are identical to the identifying data on the birth certificate in the veteran's military record, except for the name and gender of the child born, and it was a single birth. The applicant also submitted a copy of the court order that legally changed his gender to male and ordered the State to issue him a new birth certificate to reflect this gender.

4. The applicant has not proved by a preponderance of the evidence that his military records contain any factual error. The records show that the applicant entered, served in, and was discharged from the Coast Guard as a woman with the female name shown in the case caption, and the birth certificate submitted at the time of enlistment shows that the applicant was born female. Therefore, the Board concludes that the applicant's military records are not erroneous even though they do not reflect his new name and gender.

² Under the BCMR statute, 10 U.S.C. § 1552(a)(1), the Board is empowered to act on behalf of the Secretary to "correct an error or remove an injustice" from any member's or veteran's Coast Guard military record. For the purposes of the BCMRs, "injustice" is "treatment by the military authorities that shocks the sense of justice but is not technically illegal." *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976); see Decision of the Deputy General Counsel, BCMR Docket No. 346-89.

³ 33 C.F.R. § 52.24(b); see Docket No. 2000-194, at 35-40 (DOT BCMR, Apr. 25, 2002, approved by the Deputy General Counsel, May 29, 2002) (rejecting the "clear and convincing" evidence standard recommended by the Coast Guard and adopting the "preponderance of the evidence" standard for all cases prior to the promulgation of the latter standard in 2003 in 33 C.F.R. § 52.24(b)).

⁴ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

5. A DD 214 is a record of a single period of enlistment, like a snapshot, and it is supposed to reflect the facts of that enlistment and to be accurate as of the date of discharge.⁵ COMDTINST M1900.4D, the manual for completing DD 214s, contains no provisions for updating DD 214s when veterans' personal data change after their separation from the Service. For example, the Coast Guard does not correct or issue new DD 214s when members or veterans later change their names due to marriage; change their home address; or earn new awards or time in service. Once a veteran is no longer a member of and has no ongoing connection with a military service, changes in personal data are recorded by the Department of Veterans' Affairs, not by the military service.⁶ Therefore, the Coast Guard's refusal to update the applicant's active duty military records and 1988 DD 214 is not an error.

6. In the absence of error, the Board must determine whether the applicant's female name and gender in his military records constitute an injustice. The BCMR has "an abiding moral sanction to determine insofar as possible, the true nature of an alleged injustice and to take steps to grant thorough and fitting relief."⁷ For the purposes of the BCMRs, "injustice" is "treatment by the military authorities that shocks the sense of justice but is not technically illegal."⁸

7. Some employers ask job applicants to present their DD 214s if they claim to have previously served in the military. Given common American mores, the Board notes that the applicant could theoretically face discrimination and lose job offers if potential employers realize that he was born female and has changed his gender. However, the applicant has not submitted evidence of such discrimination. Moreover, such treatment would be an injustice caused by the prejudice of the employer, not by the Coast Guard's treatment of the applicant. In refusing to update the applicant's 1988 DD 214 with his new name, the Coast Guard is not treating the applicant differently than any other veteran whose personal data change after separation. The applicant's DD 214 bears his SSN, and he has the court documents to prove that his name was once the name shown on the DD 214. Therefore, the Board concludes that the applicant has not proved by a preponderance of the evidence that the original name appearing on his DD 214 constitutes treatment by military authorities that shocks the sense of justice.⁹

8. Accordingly, the Board finds that the applicant's request for correction of his military record should be denied.

⁵ UNITED STATES COAST GUARD, COMDTINST M1900.4D, Chap. 1.D.2.a.

⁶ The Board notes that this case differs significantly from BCMR Docket No. 2008-181, in which the veteran, as a retired reservist, had an ongoing connection with the Coast Guard, which owed the veteran retirement pay and benefits for 20 years of service. The Coast Guard was denying the veteran retirement pay or benefits because the veteran had changed her SSN, due to a threat of domestic violence, as well as her name and gender from male to female. In that case, the Board did not order the Coast Guard to issue the applicant a new DD 214 or to change her name or gender on any paper record. Instead, the Board ordered the Coast Guard to change the applicant's name, gender, and SSN in a database to ensure that she would receive the retirement pay and benefits she had earned.

⁷ *Caddington v. United States*, 178 F. Supp. 604, 607 (Ct. Cl. 1959).

⁸ *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976); see Decision of the Deputy General Counsel, BCMR Docket No. 346-89.

⁹ This finding is consistent with the Board's decision in BCMR Docket No. 2000-151, in which a veteran who had served in the Coast Guard as a male changed his first and middle names to female names several years after his discharge from the Service.

ORDER

The application for correction of the military record of former SA xxxxxxxxxx
xxxxxxx, xxxxxxxxxxxx, USCG, now known as xxxxxx xxxx, is denied.

