

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2012-159



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 May 29, 2012, and subsequently drafted the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated February 28, 2013, 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 stated that after his discharge from the Coast Guard he legally changed his last name from [REDACTED] to [REDACTED]. He asked the Board to correct his military records to show [REDACTED] as his new name. The applicant enlisted in the Coast Guard on January 23, 1943, and was discharged on April 8, 1946, under the last name [REDACTED].

In support of his allegations regarding his name change, the applicant submitted a partial copy of an order from the Cook County Superior Court of Illinois dated July 14, 1947, ordering a name change for him. However, it appears that the complete court order was not submitted because nowhere on the document that was submitted does the court state or identify the applicant's new legal name.

The applicant stated that he discovered the alleged error on July 11, 1947. He stated that the untimeliness should be excused "for legal purposes mandated by the court."

VIEWS OF THE COAST GUARD

On April 28, 2010, 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, Personnel Service Center (PSC), who recommended that the Board deny relief.

PSC stated that the application was not timely. PSC further stated that the applicant's name was changed on July 11, 1947, over a year after his 1946 discharge from the Coast Guard. In this regard, PSC stated that a member's DD 214 should reflect the accurate information that existed at the time of discharge.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 8, 2012, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within thirty days. The Board did not receive a response from the applicant.

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 application was not timely. 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, or reasonably should have discovered, the alleged error or injustice. The applicant stated that he discovered the alleged error on July 11, 1947. The applicant's explanation that the untimeliness should be excused "for legal purpose mandated by the court" is not persuasive because he knew of the alleged error for almost 65 years and did nothing about it.

2. The Board may still consider the application on the merits, if it finds 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 in assessing 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 stated 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.

4. The Board finds based upon a cursory review of the merits, the applicant is not likely to prevail on his claim. First, the copy of the court order submitted by the applicant is an incomplete document because nowhere on the portion submitted to the Board does the court declare or identify the applicant's new legal name. Second, even if the applicant had submitted the complete court order showing his new name, it would not prove an error or injustice in his record. The military record shows that the applicant entered, served in, and was discharged from the Coast Guard under the name shown on his DD 214 (discharge document). The Coast Guard Instruction for completing DD 214s, COMDTINST M1900.4D, contains no provisions for changing data on DD 214s that was accurate at the time of discharge. Chap. 1.D.2.a. of COMDTINST M1900.4D states that the DD 214 is a record of a single period of enlistment, like a snapshot, and it is supposed to reflect accurately the facts of that enlistment as of the date of discharge. Absent evidence to the contrary, the Board presumes that Coast Guard officials have carried out their duties correctly, lawfully, and in good faith.

5. Nor has the applicant shown that he has suffered an injustice on his DD 214 by having his name appear as that under which he served while in the Coast Guard. The applicant has not submitted any evidence that he has suffered or will suffer any prejudice by having his military record appear under the name in which he served in the Coast Guard.

6. Therefore, in analyzing the applicant's reasons for the delay, which are not persuasive, and performing a cursory review of the merits, which indicates the applicant is unlikely to prevail, the Board finds that it is not in the interest of justice to excuse the untimeliness in this case. The applicant's request should be denied because it is untimely.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

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

