

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

Application for Correction
of the Coast Guard Record of:

BCMR Docket No. 2012-224

██████████
██████████

FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case upon receipt of the applicant's completed application on September 5, 2012, and subsequently prepared the final decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated June 14, 2013, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant asked the Board to amend her DD 214 (certificate of release from active duty) for the period May 31, 1983 to April 25, 1988 to show that she served additional periods of active duty. She alleged that her DD 214 should show that she was on active duty from May 31, 1983 to May 30, 1993, the date of her discharge from the Coast Guard Reserve.

The applicant stated that she discovered the alleged error on August 17, 2012. She argued that if her application is untimely it would be in the interest of justice to consider it on the merits because she just recently received her military records from a disgruntled family member who was keeping them from her.

ENLISTMENT HISTORY

The applicant enlisted in the Coast Guard on May 31, 1983 for a period of 6 years. Four years to be served on active duty and 2 to be served in the Reserve. She twice extended her active duty obligation and was honorably released from active duty into the Reserve on May 25, 1988, after serving for 4 years, 10 months, and 25 days on active duty. She received a DD 214 documenting that period of active duty. During her Reserve service, she performed 6 days of active duty training (ADT) from November 28, 1988 until December 2, 1988. Her 6-year military obligation expired on May 30, 1989 and she was discharged from the Reserve (documented on an administrative remarks page in her military record).

On May 31, 1989, the applicant reenlisted in the Coast Guard Reserve (not on active duty) for 4 years. Her military record shows that she served 12 days on ADT from May 15, 1989 until May 26, 1989 and 30 days on temporary active duty (TEMAC) from May 28, 1989 until June 26, 1989¹ in support of Exxon Valdez Oil Pollution case. She was discharged from the Coast Guard Reserve on May 30, 1993, with an honorable discharge due to expiration of enlistment.

VIEWS OF THE COAST GUARD

On March 14, 2013, the Board received an advisory opinion from the office of the Judge Advocate General (JAG) of the Coast Guard. He recommended that the Board deny relief to the applicant.

The JAG stated that the application was not timely because it was submitted more than three years after the applicant discovered or reasonably should have discovered the alleged error or injustice. The JAG argued that the applicant should have submitted her application within three years of her 1993 discharge from the Reserve. The JAG stated that the applicant was aware of the DD 214 when discharged in 1993 because she had received a DD 214 upon her 1988 discharge from active duty. According to the JAG, when the applicant was discharged from her Reserve service in 1993 and received a discharge certificate, but not DD 214, she should have raised the issue at that time. The JAG argued that the applicant provided no persuasive reason for not bringing her application within 3 years of her discharge from the Reserve.

The JAG noted that the Board may excuse the applicant's untimeliness if it is in the interest of justice to do so, based upon a cursory review of the merits. The JAG argued that a cursory review of the merits reveals that the applicant is not likely to prevail. The JAG stated that the applicant has not submitted any evidence to show that her 1988 DD 214 contained errors or that her Reserve service qualified for an additional DD 214. In this regard, the JAG asserted that DD 214s are not issued to Reservists who complete less than ninety days of continuous active duty. Further, the JAG stated that COMDTINST 1330.1C issued on September 15, 1989 states that DD 214s are prepared "[f]or TEMAC tours of 90 days or more." The JAG stated that the applicant did not serve for 90 or more continuous days in support of the Exxon Valdez operation.

The JAG also attached a memorandum from the Commander, Personnel Service Center (PSC) and asked the Board to accept the PSC memorandum as a part of the advisory opinion. The comments in the PSC memorandum are very similar to those of the JAG and are not restated in this opinion.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

¹ The memorandum from the Commander, Personnel Service Center attached to the advisory opinion indicates that the applicant served on TEMAC from May 28, 1989 until August 17, 1989. However, there are no active duty orders in the record to cover the period from June 27, 1989 to August 17, 1989.

On March 18, 2013, a copy of the Coast Guard views was mailed to the applicant for a response. The BCMR did not receive a reply from her.

FINDINGS AND CONCLUSIONS

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

1. The BCMR has jurisdiction of the case pursuant to section 1552 of title 10, United States Code.

2. The application was not timely. Under 33 C.F.R. § 52.22, an application to the Board must be filed within three years after the applicant discovers, or should have discovered, the alleged error or injustice. Although the applicant stated that she discovered the alleged error on August 17, 2012, she should have discovered it upon her discharge from the Coast Guard Reserve in 1993. In this regard, the Board notes that the applicant was familiar with the DD 214 because she received one upon her release from approximately 5 years of active duty on April 25, 1988. Therefore, when she was discharged from the Reserve with a discharge certificate in 1993 (not a DD 214), she had sufficient knowledge about the DD 214 to at least inquire whether she was entitled to a DD 214 for her Reserve service. There is no evidence that she raised the issue until filing an application with the Board on August 23, 2012. Her argument that her untimeliness should be excused because her military documents were held in storage by a family member who refused to give them to her is not persuasive for excusing her untimeliness.

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.

4. Based upon a cursory review of the merits, the Board finds that the applicant is not likely to prevail upon her request for a DD 214 covering her 4-year Reserve enlistment. DD 214s are issued to record a term of service with the Armed Forces at the time of a member’s transfer, release, or discharge from active duty. Chapter 4.a. of COMDTINST M1900.4C. The applicant was not serving on active duty at the time of her discharge from the Reserve and was not entitled to a DD 214.

5. Therefore, due to the long delay in filing her application with the Board, the lack of a persuasive reason for not filing it sooner, and the lack of probable success on the merits of her claim, the board finds that it is not in the interest of justice to excuse the applicant’s untimeliness. The application should be denied because it is not timely.

5. Although this application is being denied for untimeliness, the Board recommends that the Coast Guard issue the applicant a DD 214 to cover her TEMAC service from May 28, 1989 to June 26, 1989 or for a longer period if supported by her military record. DD 214s are given to

document periods in which a member is released or discharged from active duty. Reservists who serve specific types of active duty while in a Reserve component may be entitled to a DD 214 upon completion of that specific active duty. Chapter 1. A. of COMDTINST M1900.4B (change 2) effective April 13, 1983, stated that DD 214s are issued to cover periods of active duty, TEMAC, ADT, and special active duty training, except that a reservist must serve on ADT for 90 or more continuous days to be eligible for a DD 214. The current regulation COMDTINST M1900.4D also states that a DD 214 will not be issued to reservists who are released from ADT less than 90 days continuous active duty. The applicant's military record shows that she was on TEMAC from at least May 28, 1989 to June 26, 1989 (and not ADT). Therefore, the 90 day continuous active duty service requirement is not applicable to the applicant's situation.

6. The Application is denied for untimeliness as stated above.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of [REDACTED], for correction of her military record is denied.

