

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-064



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. After receiving the applicant's completed application on February 25, 2014, the Chair docketed the case and assigned it to [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 19, 2014, 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 asked the Board to change the entry date on his DD 214 from August 22, 2003, to August 23, 2003. The applicant alleged that a clerical error was the reason for the incorrect date of entry into Coast Guard service. The applicant stated that his current federal employer and the Office of Personnel Management (OPM) are requiring that the applicant correct his DD 214 in order to qualify his active duty time for civilian government retirement (military time bought back). The applicant provided the Board with (1) copies of his Army DD 214, which states that he was discharged from the Army on August 22, 2003; (2) correspondence with the Board and the Coast Guard in 2010, which resulted in a correction of the entry date on his Coast Guard DD 214 from February 28, 1995, to August 22, 2003; and (3) email correspondence between the payroll office of his current agency and the Coast Guard, regarding OPM's requirement that the entry date be corrected.

SUMMARY OF THE RECORD

On July 6, 1995, the applicant enlisted in the Army. On August 22, 2003, he was honorably discharged as a chief warrant officer and received a DD 214 showing August 22, 2003, as his discharge date.

On August 22, 2003, the applicant signed an Acceptance and Oath of Office to become an ensign in the Coast Guard. He served on active duty for four years and was released to inactive

duty on August 21, 2007. The applicant received a DD 214 showing his entry date of February 28, 1995, and a separation date of August 21, 2007.

On August 23, 2007, the applicant signed an Acceptance and Oath of Office to become a lieutenant in the Coast Guard Reserve.

In 2010, the applicant filed an application with the Board (BCMR Docket No. 2010-195), requesting that the Coast Guard correct his DD 214. The applicant requested that his date of entry be changed from February 28, 1995, to August 22, 2003, and his net active service computation be changed from 12 years, 5 months, and 25 days to 4 years, 0 months and 0 days. The Coast Guard made the requested corrections *sua sponte* by issuing a DD 215 to reflect the change. As a result, the Chair administratively closed his case.

On January 29, 2014, the applicant received an email from an accounting technician at the federal agency where he works as a civilian, stating that he had an overlap of service between his separation date with the Army, with a date of August 22, 2003, and his entry date for active duty with the Coast Guard, with a corrected date of August 22, 2003, from his DD 215. The accounting technician stated that as a result of the overlap, the applicant's active duty time would not qualify for civilian government retirement (military time bought back), and OPM would need a corrected DD 215 to qualify the applicant.

VIEWS OF THE COAST GUARD

On June 26, 2014, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he adopted the findings and analysis provided in a memorandum submitted by the Commanding Officer, Personnel Service Center (PSC), who recommended that the Board grant relief.

PSC noted that the application was not timely, but stated that because he is entitled to relief, the application should be reviewed. PSC stated that pursuant to the Article 4.B.1.h. of the Coast Guard Recruiting Manual, COMDTINST M1100.2E, an individual must be discharged from another military service before being commissioned in the Coast Guard. Since the applicant did not receive a conditional release from the Army in accordance with the manual, PSC argued that the earliest entry date into the Coast Guard should be August 23, 2003. PSC stated that to avoid the applicant being charged a day of pay and allowances, the Board should order the Coast Guard not to charge the applicant for being overpaid by one day.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 6, 2014, the applicant responded to the views of the Coast Guard, stating that he has no objection to them.

APPLICABLE REGULATIONS

Article 4.B.1.h.1. of COMDTINST M1100.2D, the Recruiting Manual then in effect, states that "[a]n applicant on active or reserve duty in another service must include an approved Request for Conditional Release (DD-368) from their respective service."

Article 4.B.1.h.3. states that “[a] selectee who is currently serving on active or reserve duty in another service must be discharged from that service before being commissioned in the Coast Guard or Coast Guard Reserve.”

Title 37 U.S.C. § 205(b) states that, with respect to computing a member’s creditable military service, “[a] period of time may not be counted more than once”

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 submission, 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.¹ Here, the applicant apparently discovered the error on January 29, 2014. His application to the Board in 2010 shows that neither he nor the Coast Guard knew that his legal entry date could not be August 22, 2003, even though he signed an oath of office to become an ensign in the Coast Guard on that date. Therefore, the preponderance of the evidence shows that his application is timely filed within three years of the applicant’s discovery of the error.
3. The applicant alleged that his DD 214 is erroneous and unjust because it does not provide the correct date of his entry into active duty with the Coast Guard. 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.² The Board begins its analysis in every case by presuming that the disputed information in the applicant’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
4. The applicant’s Army DD 214 shows that he was a member of the Army and discharged from the Army on August 22, 2003, but he signed an Acceptance and Oath of Office on the same date to become an officer in the Coast Guard. The Coast Guard’s Recruiting Manual, COMDTINST M1100.2E, Article 4.B.1.h.3., states that an individual must be discharged from another military service before being commissioned in the Coast Guard. Additionally, 37 U.S.C. § 205(b) provides that, with respect to computing a member’s creditable service and the basic pay of a member, a period of time may not be counted more than once. Thus, the applicant can-

¹ 10 U.S.C § 1552 (b).

² U.S. Coast Guard, COMDTINST M1900.4D, Chap. 1.D.2.a.

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).

not be separated from the Army and enter the Coast Guard on the same day; an officer must be commissioned in a service the day after he is discharged from his prior service. Article 4.B.1.h.1. states that in the event that the individual is not yet fully discharged, he must receive a conditional release from the former service. Here, the applicant apparently did not receive a conditional release from the Army; therefore, the earliest date that the applicant could legally join the Coast Guard was August 23, 2003. The Coast Guard clearly erred by having the applicant accept his commission on August 22, 2003, instead of waiting until the next day. Based on the evidence provided, the applicant has proven by a preponderance of the evidence that the date of entry on his Coast Guard DD 214 is erroneous.

5. The Board notes that the erroneous date of entry on the applicant's DD 214 also constitutes an injustice⁵ because, as stated in the emails he submitted, it is preventing him from being able to include his military service in the calculation of his total federal service for retirement purposes.

6. Based on the records before it, the Board finds that the applicant's request for correction of his military should be granted. The dates of entry (or "hire" date), commission, and rank in his military records and the date of entry on his DD 214 should be corrected from August 22 to August 23, 2003.

7. Finally, the Board finds that the applicant's overpayment of pay and allowances for the date August 22, 2003, should be waived.⁶ Waiver is appropriate because the administrative error was attributable to the Coast Guard's recruiters, and the Board finds that the applicant likely did not notice—in the commotion of transferring military services and duty stations and switching from the pay and allowances of a CWO2 in the Army to those of an O-1E in the Coast Guard—that he received pay for the day August 22, 2003, from both the Army and the Coast Guard.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁵ *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976) (stating that for the purposes of the BCMRs, "injustice" is "treatment by the military authorities that shocks the sense of justice but is not technically illegal"); BCMR Docket No. 2002-040 (DOT BCMR, Decision of the Deputy General Counsel, Dec. 4, 2002) (stating that the Board has authority to determine whether an injustice exists on a "case-by-case basis"); *Caddington v. United States*, 147 Ct. Cl. 629, 632 (1959) (stating that 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.").

⁶ Coast Guard Pay Manual, Chap. 11.F. (permitting waivers of indebtedness resulting from erroneous payments of pay and allowances of up to \$10,000.00 made to members and former members if the payment is one that "would normally go unnoticed or undetected by the member" and if collection of the debt "would be against equity and good conscience and not in the best interests of the United States. Generally, this criteria [sic] will be met by a finding that the erroneous payment occurred through administrative error and that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member. ... Any significant, unexplained increase in pay and allowances which would require a reasonable person to inquire concerning the correctness of the pay or allowances ordinarily would preclude a waiver when the member fails to bring the matter to the attention of appropriate officials.").

ORDER

The application of [REDACTED] [REDACTED] USCGR, for correction of his military record is granted. The Coast Guard shall correct his date of entry, commission, and rank from August 22, 2003, to August 23, 2003, and shall issue him a new DD 215 reflecting this corrected date of entry. The Coast Guard shall waive any debt he may owe for overpayment of pay and allowances as a result of this correction.

September 19, 2014

