


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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2014-115**

  
SR/E-1 (former)

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**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 April 23, 2014, and prepared the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated January 23, 2015, 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 correct the amount of active duty shown in block 12.c. of his DD 214 and alleged that it erroneously fails to reflect all of his active duty time. He explained that after enlisting on July 16, 1990, he "took the early out option when the military went in cut backs" and was discharged on July 29, 1992. The applicant stated that while on active duty, he did incur "one day of lost time due to an incarceration, however my DD 214 shows multiple days of lost time." The applicant alleged that he did not have more than one day of lost time because of confinement and that "if you check the station's launch roster, you will see I returned to duty and launched when my DD 214 shows lost time." The applicant alleged that he discovered the alleged error on March 28, 2014, when he applied for veteran's benefits and was told he was not eligible.

**SUMMARY OF THE RECORD**

On July 16, 1990, the applicant enlisted in the Coast Guard as a seaman recruit (SR/E-1) for four years. Upon completed basic training on September 7, 1990, he was advanced to seaman apprentice (SA/E-2) and assigned to a boat station. A Page 7 (CG-3307) in his record states that about one week later, on the night of September 13, 1990, the applicant became involved in a high-speed car chase with the local police and was arrested on felony charges.

On October 5, 1990, the applicant's commanding officer (CO) awarded him non-judicial punishment (NJP) for his misconduct—misappropriating the vehicle of another member, attempting to elude police, running stop signs, and driving in excess of 100 miles per hour in a 35-mile-per-hour zone—reduced his rate to SR/E-1 and awarded him 14 days of extra duty. The CO also placed him on performance probation for one year but re-advanced him to SA/E-2 on January 1, 1991.

On January 14, 1991, as a result of his arrest on September 13, 1990, the applicant was sentenced to 30 days' confinement by civil authorities. His command arranged to have him serve just 7 days of confinement with the remaining 23 days commuted to 194 hours of community service and a year's probation. In addition, he was fined \$570. His command notified the Commandant that the 7 days of confinement were to be served one day—from noon to noon—per weekend as follows: January 20-21 and 26-27; and February 1-2, 10-11, 16-17, and 22-23.

On February 12, 1991, the applicant was counseled on a Page 7 about having his qualification as a watchstander revoked and being placed on "port and starboard duty" because he had failed repeated tests.

On February 26, 1991, the applicant was counseled on a Page 7 about failing to perform his assigned duties.

On July 18, 1991, the applicant was counseled on a Page 7 about failing to report for duty and having a lackadaisical attitude toward his work. He was advised that further infractions would result in discipline.

On December 31, 1991, the applicant's civil probation officer advised the command that the applicant would soon be arrested for failing to comply with his probation. Because of his probation violations and falsely reporting completion of community service hours, on April 27, 1992, the court fined the applicant another \$200, awarded him 9 months' more probation, and sentenced him to serve the remainder of his original 30-day sentence in jail to be completed in 48-hour blocks (weekends) beginning on May 6, 1992. (The court's hand-written order indicated that there were 21 days remaining on his sentence, but the record shows 23 days remaining.) These facts are described on a Page 7 in the applicant's record dated April 29, 1992, which also advised him that because of his frequent misconduct, bringing discredit to the Coast Guard, and being a "continuing administrative burden," his CO was initiating his administrative discharge.

On April 30, 1992, the applicant's CO awarded him NJP for making false official statements by lying to his command about complying with the requirements of his civil probation and by claiming to have performed community service during hours when he was on duty. The CO reduced him in rate to SR/E-1.

On May 5, 1992, the applicant's CO advised the Commandant of the applicant's increased sentence due to his probation violations and noted that the applicant's 21 days in jail would be served on the following dates: May 6-8, 10-12, 14-16, 18-20, 22-24, 26-28, and 30-June 1; and June 3-5, 7-9, 11-13, and 15-16.

On May 27, 1992, the CO formally notified the applicant in a letter that he was recommending that the applicant receive a general discharge for misconduct due to his “frequent involvement of a discreditable nature with civil authorities.” The letter advised that the applicant had a right to consult an attorney and to submit a statement and that a general discharge would deprive him of certain veteran’s benefits and cause him to encounter substantial prejudice in civilian life. By his signature, the applicant acknowledged receiving this notification and consulting an attorney, and he waived his right to submit a statement and noted that he did not object to being discharged.

On July 15, 1992, the Commandant ordered that the applicant be expeditiously discharged within thirty days.

On July 29, 1992, the applicant received a general discharge under honorable conditions for misconduct. Blocks 29 and 18 on his DD 214 show these days in 1992 as “time lost”: May 7-8, 11-12, 15-16, 19-20, 23-24, 27-28, 31-June 1; and June 4-5, 8-9, 12-13, and 15-16. Therefore, his DD 214 credits him with 1 year, 11 months, and 21 days of net active duty between July 16, 1990, and July 29, 1992.

### **VIEWS OF THE COAST GUARD**

On September 8, 2014, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case. In making this recommendation, the JAG adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC stated that no relief should be granted because the applicant’s record shows that he was confined by civil authorities for at least 28 days in total while in the Service, rather than the one day he claimed on his application. PSC stated that no correction of the applicant’s DD 214 is warranted.

### **APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On September 11, 2014, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond. No response was received.

### **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 or injustice.<sup>1</sup> The applicant acknowledged the reason for his discharge in writing and signed his DD 214 showing many days of “time lost” in 1992. Therefore, the

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<sup>1</sup> 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

preponderance of the evidence shows that the applicant knew of the alleged error—more than one day of “time lost”—in his record in 1992, and his application is untimely.

3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.<sup>2</sup> In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the Board should not deny an application for untimeliness without “analyz[ing] both the reasons for the delay and the potential merits of the claim based on a cursory review”<sup>3</sup> to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted 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.”<sup>4</sup>

4. Regarding the delay of his application, the applicant claimed that he did not discover the alleged error in his record until March 28, 2014, when he was applying for veteran’s benefits. However, the preponderance of the evidence shows that he knew of the alleged error—his many days of time lost—and was warned that his pending general discharge would deprive him of certain veteran’s benefits in 1992. The Board finds that the applicant’s explanation for his delay is not compelling because he failed to show that anything prevented him from seeking correction of the alleged error more promptly.

5. A cursory review of the merits of this case indicates that the applicant’s claim cannot prevail. Under Appendix C of PPCINST M1000.2B, the Coast Guard’s Personnel and Pay Procedures Manual, and COMDTINST M1900.4D, the manual for preparing DD 214s, a member’s active duty time in block 12.c. of a DD 214 is calculated by subtracting the date of entry on active duty from the date of separation, adding one “inclusive day,” and subtracting all days of time lost due to being incarcerated or absent without leave. Therefore, while the applicant was a member of the Coast Guard for more than two years from July 16, 1990, until July 29, 1992, he cannot be credited with two years of active duty because he was incarcerated for 7 days pursuant to his original civil sentence, awarded by a court on January 14, 1991, and incarcerated for at least 21 more days by the same court in 1992 after he violated the terms of his probation and falsified documentation of community service. These records of his misconduct and incarceration are presumptively correct,<sup>5</sup> and he has submitted no evidence to refute them. Based on the record before it, the Board finds that the applicant’s claim cannot prevail on the merits.

6. Accordingly, the Board will not excuse the application’s untimeliness or waive the statute of limitations. The applicant’s request should be denied.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

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<sup>2</sup> 10 U.S.C. § 1552(b).

<sup>3</sup> *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

<sup>4</sup> *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396, 1405 n.14, 1407 n.19 (D.C. Cir. 1995).

<sup>5</sup> 33 C.F.R. § 52.24(b); *see Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (citing *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979), for the required presumption, absent evidence to the contrary, that Government officials have carried out their duties “correctly, lawfully, and in good faith.”).

**ORDER**

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

January 23, 2015

