

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-194

██████████
██████████

FINAL DECISION

This proceeding was conducted 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 August 11, 2014, the Chair docketed the case and assigned it to ██████████ to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated April 24, 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 amend his DD Form 214 to show his Reserve Obligation Termination date as October 27, 2005, instead of December 30, 2003, as it is currently listed. The applicant stated that his initial contract stated that he would serve four years on active duty followed by four years of inactive duty, and he completed that obligation. The applicant alleged that due to the error on his DD 214, both his pay and time in service have been affected. The applicant also claimed that he requested that a Statement of Credible Service be completed in May 2012 when he discovered the error. According to the applicant, after his request for the Statement of Credible Service, the Pay and Personnel Center (PPC) has taken action against him to recoup an overpayment of \$1330.80. In support of his application, the applicant submitted the following documents:

- A copy of his DD Form 214;
- A copy of his initial contract dated December 31, 1996;
- A copy of his second contract dated May 21, 2009;
- Notification of recoupment of funds;
- Leave and Earnings Statements (LESEs) for the months of April, May, and June 2012 and May 2014;

- Statement of Creditable Service;
- E-mail from Mr. W dated April 24, 2014, indicating that the applicant's DD 214 needs to be corrected;
- Remission application dated September 4, 2012; and
- E-mail from PERS2 K dated April 24, 2014, explaining the alleged error.

On June 21, 2012, the applicant received a notice of overpayment stating that the applicant had received an overpayment of \$1,330.80 and would be required to make repayment by making estimated payments of \$345.83 per month beginning August 1, 2012.

On September 4, 2012, the applicant submitted a remission application. The applicant specifically stated in his application that he received a letter stating that he was overpaid by \$1,300.00 and that "[i]t appeared that [he] was not getting credit for 4 years of inactive duty." The applicant further stated, "when I first came back in I was getting the 4 years of inactive duty but then it was taken away and stated that I was overpaid. This happened in Jun 2012 and I brought it to [BM1 H's] attention. Once he transferred out [BM1 D] took over and sent paperwork to Sector [REDACTED]. Also included in the applicant's remission application is a command endorsement. The endorsement from the Officer in Charge states:

I believe member has been caused [undue] hardship due to numerous miscalculations of enlistments throughout his career. I think it should be took into consideration the fact that the amount trying to be recouped is incorrect based on members initial entry dates into service. request thorough review of members service to calculate correct amounts to be recouped if any. Member is currently receiving basic pay calculated for 8 years time in service vice the nearly 11 years he has served. request the above to be took into consideration prior to any more pay deductions.

On April 24, 2014, the applicant received an email from Mr. W, notifying him that PPC will be unable to credit him the year (2003-2004). The email specifically stated:

It is understood that [applicant]'s original contract (DD Form 4) of 19961231 was for a period of 08 years total placing the expected loss date at 20041230. However the Discharge date of 20031230 on the [Statement of Creditable Service] is supported by the Reserve Obligation Term Date of 20031230 on the 19971028 DD-214 and also the P993/Discharge action submitted by Commandant (PSD(P)); page 182 of JUMPS REC file and SEG 57 JUMPS HIST file.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on December 31, 1996, under the Delayed Entry Program (DEP). His Reserve contract states that he was enlisting for eight years, of which at least four years would be served on active duty in the regular Coast Guard. It also states that the recruit understands that his period of time in the DEP, prior to enlisting on active duty, is "NOT creditable for pay purposes upon entry into a pay status this time is counted toward fulfillment of my military service obligation or commitment." On October 27, 1997, the applicant was discharged from the Reserve for the Convenience of the Government so that he could enlist in the regular Coast Guard on October 28, 1997.

On October 27, 1997, the applicant received a page 7 documenting that the applicant has been honorably discharged from the USCGR Delayed Enlistment Program for the Convenience of the Government “to enlist in the regular Coast Guard on 97OCT28 having served in the DEP since 96DEC31. The Page 7 further states that “[t]ime served in the DEP is creditable toward completion of the 8-year military obligation, but is not creditable for purposes of longevity or pay and allowances.”

On October 13, 2001, the applicant signed an agreement to extend his enlistment for two months, with a new enlistment expiration date of December 27, 2001.

On December 27, 2001, the applicant was honorably released from active duty for completion of his remaining inactive service. The Reserve Obligation Termination Date on his DD 214 is December 30, 2003—just seven years from the day he enlisted in the Reserve. The applicant reenlisted in the regular Coast Guard on May 21, 2009, and currently remains on active duty.

VIEWS OF THE COAST GUARD

On February 24, 2015, the Judge Advocate General (JAG) submitted an advisory opinion recommending that the Board grant alternative relief in accordance with the recommendation in a memorandum submitted by the Commander, Personnel Service Center (PSC).

PSC contended that the applicant is mistaken in his belief that his military service obligation began on the date he entered the active component on October 28, 1997. While PSC referenced the most recent Coast Guard Recruiting Manual, not the one in effect at the time of the applicant’s enlistment and on the date of his Reserve Obligation Termination Date, the policy remains the same with regard to time spent in DEP status. The time spent in DEP status is creditable towards the eight-year military service obligation, but is not creditable for purposes of longevity and pay and allowances.

PSC noted, however, that the applicant’s DD 214 contains an error and therefore should be updated via a DD 215. Specifically, the applicant’s DD 214 shows the applicant’s reserve obligation termination date is December 30, 2003. Since time served in the DEP counts towards the applicant’s military obligation, his reserve obligation termination date should be eight years from the date the applicant signed his initial contract on December 30, 1996. Therefore, the DD 214 should be updated to correctly reflect a reserve obligation termination date of December 30, 2004. PSC stated that once the DD 214 has been updated, the applicant can submit his DD 215 to PPC so that they may correct his Statement of Credible Service. PSC stated that this correction could potentially affect the applicant’s in-service debt.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 25, 2015, the applicant submitted a response to the Coast Guard advisory opinion in which he acknowledged and agreed with the JAG and PSC’s conclusions, as he understood them. The applicant provided the following additional statement:

In response to CG PSC-cd memo 5420 of 26 Jan 2015, enclosure (1), paragraph 4(b), I request to clarify that the date of my enlistment into the Delayed Entry Program (DEP) is 31 December 1996 vice 30 December 1996.

APPLICABLE LAW AND POLICY

Chapter 2.D.2.e of COMDTINST M1100.2D of the Coast Guard Recruiting Manual in effect at the time of the applicant's entry into the Delayed Entry Program and on his Reserve Obligation Termination Date. The manual states, "[w]ithin 12 months of entering the program, a Delayed Enlistment Program (DEP) enlistee shall be enlisted in the regular Coast Guard for four or six years provided he/she remains fully qualified. At the time of enlistment:

3. Discharge on Enlistment. Discharge from the USCGR-DEP will be effective the day preceding the day of regular enlistment. Discharge will be effected by the following Administrative Remarks (CG-3307) entries:

Honorably discharged from the USCGR Delayed Enlistment Program (DEP) for the convenience of the government to enlist in the regular Coast Guard on [date], having served in the DEP since [date]. Time spent in the DEP is creditable towards completion of the eight-year military obligation, but is not creditable for purposes of longevity and pay and allowances.

I hereby certify all information on my enlistment documents is current and accurate. I have not had any involvement with the police or had any changes in dependency other than what is reported to my recruiter. I understand withholding information is punishable under the Uniform Code of Military Justice and may result in a less than honorable discharge for fraudulent enlistment."

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 in his record.¹ The applicant claimed that the error occurred on December 1, 2001, and that he discovered the alleged error in his record on June 21, 2012. The applicant clearly knew or should have known upon receipt of his DD 214 in December 2001 that the Reserve Obligation Termination date was incorrect. The three-year statute of limitations period began upon the applicant's release from active duty on December 27, 2001. Therefore, the application is considered untimely.²
3. 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 (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"³ to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted that "the

¹ 10 U.S.C. § 1552(b).

² *Ortiz v. Secretary of Defense*, 41 F.3d 738, 743 (D.C. Cir. 1994).

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

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.”⁴

4. The applicant requested that the Board correct his DD 214 to show a Reserve Obligation Termination Date of October 27, 2005 instead of December 30, 2003, as is currently listed. The applicant alleged that due to the error on his DD 214, both his pay and time in service have been affected. When considering allegations of error and injustice, the Board begins its analysis in every case by presuming that the disputed information in the applicant’s military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁵ Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”⁶

5. A cursory review of the applicant’s record shows that his DD 214 did in fact contain an error and should therefore be corrected to show his Reserve Obligation Termination date as December 30, 2004. Time served in the DEP counts towards the applicant’s military obligation. Hence, the applicant’s reserve obligation termination date should be eight years from the date the applicant signed his initial contract on December 31, 1996. Therefore, the DD 214 should be updated to correctly reflect a reserve obligation termination date of December 30, 2004.

6. The applicant is incorrect in his belief that his military service obligation began on the date he entered the active component on October 28, 1997. Pursuant to the Coast Guard Recruiting Manual, while the applicant’s time in the DEP does not count towards his pay and allowances, it does count towards his military service obligation. The applicant also signed and acknowledged on his enlistment contract and on a Page 7 issued upon his discharge from the DEP, that his time in the DEP would only be counted towards his military service obligation. Therefore, the applicant’s request to change his Reserve Obligation Termination Date to October 27, 2005 should be denied.

7. Accordingly, the applicant has not proven by a preponderance of the evidence that his Reserve Obligation Termination Date should be changed to show a date of October 27, 2005. However, the Board finds that it should be corrected to show December 30, 2004.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁴ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396, 1405 n14, 1407 n19 (D.C. Cir. 1995).

⁵ 33 C.F.R. § 52.24(b).

⁶ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

ORDER

The application of [REDACTED], USCG, for correction of his military record is granted in part. The Reserve Obligation Termination Date on his DD 214 dated December 27, 2001, should be corrected to December 30, 2004.

April 24, 2015

