

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2015-106



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 and military records on June 5, 2015, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated March 4, 2016, 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 alleged that he is the veteran whose name appears below his name in the case caption above. The veteran enlisted in the Coast Guard on September 20, 1974, and was honorably discharged from the Coast Guard on September 19, 1978. The applicant alleged that a State court has legally changed his name, and he asked to have his discharge form, DD 214, corrected by issuing a DD 215 showing his new name.

In support of his allegations, the applicant submitted a copy of the veteran's DD 214 and a State court order, dated April 26, 1999, which shows that the applicant changed his name from that of the veteran to his current name. He also submitted two forms from the Social Security Administration on which his new name (except with a different middle name) and the Social Security number that appears on the veteran's DD 214 are handwritten.

VIEWS OF THE COAST GUARD

On October 5, 2015, 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 current case submitted by the Commanding Officer, Coast Guard Personnel Service Center (PSC), who recommended the Board deny relief.

PSC stated that the application is untimely and so should not be considered by the Board beyond a cursory review. PSC did not dispute that the applicant is the same person as the veteran but argued that relief should be denied because the applicant has not shown that his DD 214 is erroneous or unjust. PSC stated that under COMDTINST M1900.4D, the information on a DD 214 is supposed to be accurate at the time it is issued, and the applicant has not shown that his DD 214 was inaccurate on the date it was issued or that it is unjust. PSC noted that the applicant was discharged from the Coast Guard in 1978 and did not change his name until 1999.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 20, 2015, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within thirty days. The Board received no response.

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 Board has jurisdiction over this matter pursuant to 10 U.S.C. § 1552.
2. The application is untimely under 10 U.S.C. § 1552(b) because it was not filed within three years of the date the applicant completed, and hence discovered, his legal name change. The applicant completed his name change in 1999, as shown by the court order legally changing his name. However, the application was filed in 2015, about sixteen years later. Therefore, a preponderance of the evidence shows that the applicant knew of the alleged error in his record in 1999 and failed to timely file his application.
3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.¹ 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”² 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.”³
4. The applicant did not provide any excuse for the untimeliness of his application, and no justification for his delay is apparent in the record.⁴
5. The Board's review of the merits shows that the applicant's claim cannot prevail. Although the applicant has submitted substantial evidence showing that he is the veteran whose

¹ 10 U.S.C. § 1552(b).

² *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

³ *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).

⁴ “Injustice” is sometimes defined as “treatment by the military authorities that shocks the sense of justice but is not technically illegal.” *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976).

DD 214 he wants corrected, he has not shown that his DD 214 is either erroneous or unjust. His DD 214 and other military records accurately show the name he served under. COMDTINST M1900.4D requires that a DD 214 be accurate as of the date of discharge, and the applicant's name on his DD 214 is accurate as of the date of his discharge. Nor has the applicant shown that having his DD 214 reflect his legal name at the time he served constitutes an injustice, such as a unique or unusual risk of prejudice or harm. As this Board has found in prior cases,

[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. COMDTINST M1900.4D, the manual for completing DD 214s, contains no provisions for updating DD 214s when veterans' personal data change after their separation from the Service.⁵

The Coast Guard's recommendation against issuing a DD 215, which is used to correct actual errors on veterans' DD 214s, to instead update a veteran's personal data pursuant to post-discharge changes is thus in line with its regulations and consistent with past Board decisions.

6. Accordingly, the Board will not waive the statute of limitations. The applicant's request should be denied based on its untimeliness and lack of merit.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁵ BCMR Docket No. 2009-060, cited in BCMR Docket Nos. 2015-024, 2014-112. *See also* BCMR Docket Nos. 2014-024 (denying relief to applicant who had undergone post-discharge adoption as adult); 2012-131 (denying relief to applicant who changed his last name to his step-father's last name after he was discharged from the Coast Guard).

ORDER

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

March 4, 2016

