

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2015-134

██████████
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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 application on June 16, 2015, and assigned it to staff member ██████████ to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated April 29, 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, a former seaman apprentice (SA), asked the Board to correct his DD 214 to reflect the name that he legally adopted in 1962, after his discharge from the Coast Guard, which appears in bold in the caption above. In support of his application, he submitted a copy of a Final Decree from the Circuit Court of ██████████ which shows that a judgment was entered by that Court on May 15, 1962, authorizing him to assume a new legal name as of that date. The applicant stated that he served in the Army and the Coast Guard and wants to be buried in a National Cemetery when he dies and, the Board presumes, he wants his grave marker to reflect his new name.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on July 3, 1956, and was honorably discharged for the convenience of the government on February 21, 1957. His discharge form DD 214 and other Coast Guard records reflect his former name, which is not his current legal name.

APPLICABLE REGULATIONS

Under COMDTINST M1900.4D, the Commandant's instruction for preparing DD 214s, "[a]ll entries [on the DD 214], unless specified otherwise (i.e., block 7a,7b), are for the current

period of active duty only from the date of entry as shown in block 12a through the date of separation as shown in block 12b.”

VIEWS OF THE COAST GUARD

On November 13, 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 case submitted by the Commanding Officer, Coast Guard Personnel Service Center (PSC), who recommended that the Board deny relief.

PSC stated that the application should be denied due to untimeliness because the applicant was discharged on February 21, 1957, and did not provide any justification for the delay in submitting his application. PSC also argued that relief should be denied because the applicant's DD 214 lists the legal name that he had during his military service, and the DD 214 was prepared in accordance with Chapter 1.D.2.a. of the Coast Guard DD 214 Manual, which states that all entries on the DD 214 are for the current period of active duty. Finally, PSC argued that there is no error or injustice because the applicant changed his name in 1962 and his DD 214 correctly shows the name that he had during his period of active duty which ended in 1957.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 24, 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 concerning this matter pursuant to 10 U.S.C. § 1552. 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 was discharged in 1957, legally changed his name in 1962, but did not submit his application to the Board until 2015. Therefore, the preponderance of the evidence shows that he has known of the alleged error in his record for decades, and his application is untimely.

2. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.² 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 longer the delay

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

² 10 U.S.C. § 1552(b).

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

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

3. Regarding the lengthy delay in submitting his application, the applicant stated that he discovered the error in 2010 and wants his name changed in his military records because when he dies he wants to be buried in a national cemetery. The Board finds that his explanation for his delay is not compelling because he failed to show that anything prevented him from seeking correction of the alleged errors or injustices more promptly.

4. A cursory review of the merits of this case shows that it lacks potential merit. The record shows that the applicant enlisted and served honorably in the Coast Guard under one name, was discharged in 1957, and legally changed his name in 1962. Although he requested that his military records be corrected to reflect his new name so he can be buried in a national cemetery, the Board finds that his military records correctly show the name that he served under because his DD 214 was prepared in accordance with COMDTINST M1900.4D, Chapter 1.D.2.a., the Commandant’s instructions for preparing the DD 214. Moreover, the applicant has not shown that having his military records reflect his original name constitutes an injustice.⁵ This Board has previously articulated the justification for maintaining a veteran’s former legal name on a DD 214 as it was on the date of discharge as follows:

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.⁶

The actions of the Coast Guard in this case are thus in line with its regulations and consistent with past Board decisions.

5. The Board understands the applicant’s desire to have his headstone or grave marker reflect the name that he legally adopted in 1962 and not the name on his DD 214. A staff member of the BCMR contacted the Memorial Service Programs at the Department of Veterans Affairs and learned that the name on a veteran’s government headstone or marker is the veteran’s legal name and not necessarily the veteran’s name on the DD 214. Accordingly, when a deceased veteran’s family member or next of kin submits the VA Form 40-1330, Claim for Standard Government Headstone or Marker, the package should include a copy of the court order changing the veteran’s name in addition to the veteran’s DD 214. This action will ensure that the veteran’s legal name at the time of death is reflected on the headstone or marker.

6. Accordingly, the Board will not excuse the application’s untimeliness or waive the statute of limitations because the complaint lacks potential merit. His request should be denied.

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

⁵ *Id.*

⁶ Dept. of Homeland Security, Board for Correction of Military Records, Docket 2009-060 Final Decision.

ORDER

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

April 29, 2016

