

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2015-178**

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██████████

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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 applicant's completed application on August 6, 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 June 27, 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 asked the Board to change the separation date in Block 12.b. of his DD 214<sup>1</sup> from August 2, 1990, to September 4, 1990, and change the net active service in Block 12.c. from one year, ten months, and twenty-eight days to two years, zero months, and zero days. He alleged that the information in these two blocks is incorrect because they fail to take into account the fact that he took terminal leave prior to being discharged.

Regarding the delay in submitting his application, the applicant stated that although he was discharged in 1990, he did not discover the alleged errors in his record until June 9, 2015.

**SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard Reserve on July 11, 1988, and the contract states that he was to be enlisted into the regular Coast Guard within one year. On September 5, 1988, he enlisted in the regular Coast Guard for a term of two years of active duty, through September 4, 1990. The applicant's DD 214 shows that he was released from active duty on August 2, 1990, 34 days before his end of enlistment (EOE) date, and the narrative reason for separation states that he was released early to enter or return to college, in accordance with

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<sup>1</sup> The DD 214 provides a member and the service with a concise record of a period of service with the Armed Forces at the time of the member's separation, discharge, or change in military status (reserve/active duty).



Article 12.B.8. of the Coast Guard Personnel Manual. The record also shows that the applicant was assigned to a Coast Guard Reserve Unit (CGRU) in [REDACTED] beginning on August 3, 1990. His DD 214 shows that his separation code (SPD) is KCF, and the Separation Program Designator handbook states that this code is used for members who are voluntarily discharged before their EOE date to attend an educational facility.

Other than the narrative reason for separation and the SPD code on the applicant's DD 214, there is nothing in the record to show that he applied for the early release program, that his command approved the request, or that PSC approved the request. However, Block 17 of his DD 214 shows that he was not paid for any accrued leave upon discharge.

### **APPLICABLE LAW AND REGULATIONS**

COMDTINST M1900.4D contains the Commandant's instructions for completing the DD 214, and Chapter 1.D.2. provides that it must be accurate as of the date of separation.

Article 12.B.8.a. of the Personnel Manual provides that commanding officers may authorize release up to 30 days early for a member with a unique schooling or career opportunity he or she would lose if released on his or her normal enlistment expiration. The Coast Guard Personnel Command will not waive the 30-day limit on this authority. Members must combine all remaining earned leave and separation, the two totaling a maximum of 90 days.

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

On December 16, 2015, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in accordance with a memorandum submitted by the Commander, Personnel Service Center (PSC). PSC also argued that the application is untimely and should not be considered by the Board beyond a cursory review.

PSC argued that relief should be denied because there are no errors on the applicant's DD 214. PSC stated that the applicant was released before his normal EOE date to enter or return to college, and that his release prior to his expiration of enlistment is authorized by Article 12.B.8. of the Coast Guard Personnel Manual. Accordingly, PSC argued that Block 12.b. of the applicant's DD 214 accurately reflects the date that he was released early from the Coast Guard to enter or return to college.

The Coast Guard did not address the applicant's allegation that his DD 214 is incorrect because it does not reflect the terminal leave that he took immediately prior to being discharged, but the JAG provided a printout from the Coast Guard personnel database which shows that, pursuant to his release from active duty, the applicant was authorized 34 days of leave from June 28, 1990, to August 1, 1990.



## APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 21, 2015, the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. The applicant responded on March 7, 2016, and disagreed with the JAG's recommendation.

The applicant stated that he discovered the errors in his records in June 2015 after he was denied VA mortgage benefits. He stated that the VA told him that the benefit was denied because his military records show that he served less than two years on active duty, but he stated that he had previously received two VA backed home loans so he could not understand why he was being denied this time around.<sup>2</sup>

The applicant stated that when his enlistment was coming to an end in 1990 he was told that he could leave the Coast Guard 30 days early using the early release college program. He added that he was planning to return to the University of [REDACTED] but did not need to apply for an early discharge because he had enough leave saved up to go on terminal leave and start school on time. The applicant stated that he signed his discharge papers intending to use his terminal leave but argued that his records erroneously indicate that he was discharged pursuant to the early release for college program. He also stated that he received his normal Coast Guard paycheck until the end of his enlistment in September.

## 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>3</sup> The applicant was released from active duty in 1990 but did not submit his application to the Board until 2015. Although he alleged that he discovered the error in his record in 2015, his DD 214, which he signed, shows a separation dated of August 2, 1990. Therefore, the preponderance of the evidence shows that the applicant knew his separation date in 1990, 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>4</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>5</sup> to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted that “the

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<sup>2</sup> Eligibility for a VA home loan requires that the veteran served 24 continuous months on active duty. U.S. Department of Veterans Affairs, [http://www.benefits.va.gov/HOMELOANS/purchaseco\\_eligibility.asp](http://www.benefits.va.gov/HOMELOANS/purchaseco_eligibility.asp) (last visited June 22, 2016).

<sup>3</sup> 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

<sup>4</sup> 10 U.S.C. § 1552(b).

<sup>5</sup> *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.”<sup>6</sup>

4. The applicant stated that he discovered the alleged errors in his record on June 9, 2015, after being told that he was ineligible for a VA home loan because he did not serve 24 continuous months on active duty, despite receiving two previous VA home loans. The applicant apparently discovered his ineligibility for the loan in 2015, but it is his separation date that he is asking the Board to change, and the record shows that he signed his DD 214 showing an enlistment date of September 5, 1988; a separation date of August 2, 1990; and net active service of 1 year, 10 months, and 28 days, upon his separation in August 1990. Therefore, the record indicates that he knew his separation date and the fact that he had served less than two years on active duty no later than August 1990.

5. The applicant alleged that the separation date and net active service on his DD 214 are incorrect because he took leave at the end of his enlistment and should not have been separated until his leave ended. However, his DD 214 clearly shows that he began active duty on September 5, 1988, and was released from active duty on August 2, 1990, before the end of his two-year enlistment so that he could attend school. In addition, the Coast Guard’s database shows that he took 34 days of terminal leave from June 28 through August 1, 1990, prior to his separation on August 2, 1990. His DD 214 also shows that he had no remaining leave to sell upon his release from active duty on August 2, 1990. These records are presumptively correct and the applicant has submitted nothing that refutes them.<sup>7</sup>

6. Accordingly, because the application is untimely and there is no evidence supporting the applicant’s request for correction, the Board will not waive the statute of limitations. His request should be denied.

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

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<sup>6</sup> *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

<sup>7</sup> 33 C.F.R. § 52.24(b); 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.” *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 former [REDACTED] USCG, for correction of his military record is denied.

June 27, 2016

