

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2015-186

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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 on August 12, 2015, upon receipt of the completed application, and prepared the decision for the board as required by 33 C.F.R. § 52.61(c).

This final decision, dated July 21, 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 correct the date of enlistment on his discharge form DD 214 from May 23, 1982, to about a year earlier, May 27, 1981. The applicant alleged that the date of entry on his DD 214 is erroneous and that the error is causing him to be denied a type of home mortgage loan by the Department of Veterans Affairs (DVA) because his DD 214 does not reflect sufficient service time to qualify for the loan. He stated that to qualify for the loan, his DD 214 must reflect six years of service but it does not. The applicant alleged that he discovered the error on June 4, 2015. In support of his allegations, the applicant submitted the following:

- A Personnel Action form shows that the applicant originally enlisted in the Coast Guard Reserve on May 27, 1981, for six years, and that his expiration of enlistment would be May 26, 1987.
- An enlistment bonus document shows that the applicant enlisted in the Coast Guard Reserve for six years on May 27, 1981, as a seaman apprentice port securityman (SAPS) at the Captain of the Port in New York City.
- Endorsed travel orders for active duty training show that the applicant's pay base date is May 27, 1981; that he was ordered to report for initial active duty training, phase 1 (boot camp) on June 22, 1981; and that he completed the boot camp and departed the training center on August 14, 1981, 1 month and 23 days later.

- The applicant's DD 214, which documents his completion of phase 2 of his initial active duty training as a port securityman, shows that he entered active duty on May 23, 1982; that he was released from active duty on July 30, 1982, after he completed 2 months and 8 days of active duty for training; and that he had 1 month and 23 days of prior active duty and 10 months and 3 days of prior inactive (reserve) duty, as follows:

12	RECORD OF SERVICE	YEAR(s)	MON(s)	DAY(s)
a.	Date Entered AD This Period	82	05	23
b.	Separation Date This Period	82	07	30
c.	Net Active Service This Period	00	02	08
d.	Total Prior Active Service	00	01	23
e.	Total Prior Inactive Service	00	10	03

SUMMARY OF THE RECORD

On May 27, 1981, the applicant signed a six-year Coast Guard Reserve enlistment contract, committing service through May 26, 1987. Therefore, his pay base date is May 27, 1981. His travel orders and a Personnel Action form show that served on active duty to attend boot camp from June 22 to August 14, 1981, a period of 1 month and 23 days.

On September 30, 1981, the District Commander sent the applicant a letter noting that phase 2 of his initial active duty training would be completed the next summer and would consist of either "A" School or on-the-job training. The applicant's records show that he was attending college at the time.

Travel orders and Personnel Action forms show that from May 23 to July 30, 1982, the applicant completed phase 2 of his initial training to earn the port securityman (PS) rating. Upon completing phase 2, he was released from active duty and issued his DD 214 with the entries shown in the chart above.

As a reservist, the applicant performed inactive duty by regularly drilling one weekend per month at his reserve unit at the port of New York, and he performed two-week periods of active duty training annually. He did not perform any periods of active duty for training of 90 days or more and he was never called up under Title 10. He advanced to PS3/E-4 on August 1, 1986. An extension contract in his record shows that the applicant extended his enlistment for a few months for administrative reasons and was honorably discharged from the Reserve on July 1, 1987.

VIEWS OF THE COAST GUARD

On December 21, 2015, the Judge Advocate General (JAG) submitted an advisory opinion with a recommendation that the Board deny relief.

The JAG argued that the application should not be considered beyond a cursory review because it is untimely since the applicant received his DD 214 in 1982. The JAG stated, more-

over, that the applicant's request lacks merit because pursuant to the manual for preparing DD 214s then in effect, DD 214s were issued upon a reservist's completion of phase 2 of their initial active duty training and block 12.a. must show the "date of entry on the current period of active duty or active duty for training." The JAG stated that the applicant's DD 214 is correct because it shows the date he began active duty for training for phase 2 in block 12.a. and that the applicant's claim that block 12.a. should show the date he enlisted in the Reserve is erroneous.

In support of the advisory opinion, the JAG submitted documents from the applicant's record and a copy of Chapter 1.A.1. of COMDTINST M1900.4B, the DD 214 manual in effect in 1982. Chapter 1.A.1. states the following:

Eligible Personnel. The DD Form 214 is issued to:

a. Personnel Released From Active Duty. Except as provided in subparagraph b, of this paragraph, the form will be furnished at the time of separation from a period of active service or temporary active duty.

b. Personnel Released From Active Duty for Training.

(1) The DD Form 214 will be furnished personnel being separated from a period of active duty for training when they have served 90 days or more.

(2) The DD Form 214 shall be issued for a period of active duty for training less than 90 days to:

(a) Reservist separated for physical disability ...

(b) USCGR-RK trainees upon release from their second phase of initial active duty for training regardless of its length.

The JAG included with the advisory opinion a memorandum prepared by the Personnel Service Center (PSC), which concluded that the applicant's DD 214 is already correct and no correction is warranted. PSC stated that only time served on ADT orders or in support of a contingency operation under Title 10 orders should be documented on a DD 214 for reservists.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 12, 2016, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to submit a response within thirty days. 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 submissions, 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.¹ Although the applicant alleged that he discovered the

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

alleged error on his DD 214 in 2015, the record shows that he received and signed his DD 214 in 1982 and presumably knew its contents at that time. Therefore, the preponderance of the evidence shows that the applicant knew the date of entry in block 12.a. on his DD 214 in 1982 but failed to challenge it for more than thirty years. 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.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 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. A cursory review of the merits of this case and the applicant’s travel orders and other military records shows that his request lacks merit. Pursuant to COMDTINST M1900.4B, Chapter 1.A.1., block 12.a. of his DD 214 correctly shows the date he entered active duty for the period of active duty for training that he served in the summer of 1982 to complete phase 2 of his initial training; block 12.b. correctly shows the date he completed phase 2; block 12.c. correctly shows the period between blocks 12.a. and 12.b., which was 2 months and 8 days; block 12.d. correctly reflects his prior period of active duty for training of 1 month and 23 days when he attended boot camp in the summer of 1981; and block 12.e. accurately reflects the remaining time since his enlistment as inactive (Reserve) service. Although the applicant enlisted in the Reserve on May 27, 1981, the record contains no evidence that substantiates his allegation that that date should appear in block 12.a. of his DD 214, which is supposed to show the start date of the period of active duty that ends in block 12.b. The entries in block 12 are correct, and the applicant’s DD 214 and other military records are presumptively correct.⁵ He has submitted no evidence that refutes the data in block 12 of his DD 214.

5. Based on the record before it, the Board finds that the applicant’s claim is untimely and cannot prevail on the merits. 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)

² 10 U.S.C. § 1552(b).

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

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); *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 [REDACTED] [REDACTED] [REDACTED] USCGR, for correction of his military record is denied.

July 21, 2016

