

**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. 2016-005**



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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 October 8, 2015, and assigned it to staff member [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated August 5, 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 served as a [REDACTED] on active duty in the Coast Guard and was separated from active duty and placed on the temporary disabled retired list (TDRL) on August 29, 1999, and honorably discharged on November 2, 2001. She asked the Board to correct the following blocks on her DD 214:<sup>1</sup>

**Block 11, Primary Specialty.** The applicant alleged that the X's in this block should be replaced with her specialty [REDACTED]).

**Block 13, Decorations, Medals, Badges, etc.** The applicant alleged that this block should include all of the decorations, citations, and training that she earned/completed during her service. She did not allege specific omissions.

**Block 23, Type of Separation.** The applicant alleged that block 23 should read that she was separated and not retired. She stated that she was temporarily retired but alleged that it should have been changed once she was discharged.

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<sup>1</sup> The DD Form 214 provides the member and the service with a concise record of a period of active service with the Armed Forces at the time of the member's separation, discharge or change in military status (reserve/active duty). In addition, the form is an authoritative source of information for both governmental agencies and the Armed Forces for purposes of employment, benefit and reenlistment eligibility, respectively. COMDTINST M1900.4D

The applicant stated that she did not discover the errors in her record until July 28, 2015, and that the Board should find it in the interest of justice to consider her application because she was recently hired by the federal government and is unable to buy back her service time because Block 23 of her DD 214 states that she is retired.

### SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on January 13, 1997, attended recruit basic training, and completed [REDACTED] "A" School in July 1997. On June 28, 1999, the Central Physical Evaluation Board (CPEB) convened and recommended that she be temporarily retired because she had been diagnosed with cyclothymic disorder with PTSD. The applicant was temporarily retired (placed on the TDRL) on August 29, 1999, and her DD 214 shows that she received an SFK<sup>2</sup> SPD code; an RE-2 reenlistment code; and the type of separation is listed as "retired."

On November 2, 2001, the applicant was notified via letter from the Coast Guard Personnel Command that it had approved the recommended findings of the Physical Evaluation Board (PEB) and that she would be removed from the TDRL and discharged from the Coast Guard by reason of physical disability incident to service with severance pay effective November 2, 2001. The letter states that an Honorable Discharge Certificate and Honorable Discharge Button were enclosed with the letter.

### APPLICABLE LAW AND REGULATIONS

Chapter 1.B.3. of COMDTINST M1900.4D, the manual for preparing the DD 214, states that members who are being removed from the TDRL will not receive a DD 214.

Chapter 1.C. of COMDTINST M1900.4D states that the DD form 214 will be issued at the effective date of the member's change of status except in the case of personnel who have been separated before a physical evaluation board and have been placed in an "awaiting orders status" pending final action on retention, retirement, or discharge for physical disability.

Chapter 1.D.2 of COMDTINST M1900.4D provides that the DD 214 must be accurate as of the date of the member's separation. Chapter 1.E. of the instruction states that block 11 (Primary Specialty) of the DD 214 should indicate "NA" for enlisted members and block 13 should show "all decorations, medals, badges, commendations, citations, and campaign ribbons awarded or authorized for all periods of service."

Chapter 1.E. of COMDTINST M1900.4D states that block 23 (Type of Separation), shall contain the type of separation effected: "DISCHARGED", "RELEASED FROM ACTIVE DUTY", "RETIRED", "RESIGNED", "COMMISSION REVOKED", or other as appropriate.

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<sup>2</sup> SFK is used to identify members who receive a mandatory retirement as required by law due to temporary physical disability. Separation Program Designator Handbook, January 13, 1994.

### VIEWS OF THE COAST GUARD

On February 25, 2016, the Judge Advocate General 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 argued that the application is untimely because the applicant was separated from active duty and received her DD 214 in 1999 but did not submit her application to the Board until 2014.

PSC argued that relief should be denied because the applicant's DD 214 is correct as issued, and she has failed to show that the information on it is erroneous or unjust. With regards to her allegation that block 11 of her DD 214 is incorrect and should list her specialty as [REDACTED], PSC argued that block 11 correctly indicates "NA" because the applicant was discharged as an enlisted member and Chapter 1.E. of COMDTINST M1900.4D states that block 11 of the DD 214 should indicate "NA" for enlisted members.

With regards to the applicant's request that block 13 of her DD 214 be corrected to show her decorations, citations, and training, PSC argued that block 13 of her DD 214 is correct because there is no award documentation in her record, nor did she provide any evidence to support the addition of any awards to block 13.

Regarding the applicant's allegation that block 23 of her DD 214 should be corrected to show that she was separated and not retired, PSC argued that her DD 214 correctly indicates "Retired" in block 23 because she was recommended for temporary retirement by the CPEB on [REDACTED] ed on the TDRL on that date. Moreover, the JAG alleged, she is not eligible for a DD 214 on the date that she was removed from the TDRL and separated because Chapter 1.B.3. of COMDTINST M1900.4D states that members removed from the TDRL [REDACTED] receive a DD 214.

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

On March 8, 2016, the BCMR sent the applicant a copy of the Coast Guard's views, including a copy of the letter she was sent dated November 2, 2001, and invited her to respond within 30 days. The BCMR did not receive a 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 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 of the day the applicant discovers the alleged error in his record. 10 U.S.C. § 1552(b). The applicant was placed on the TDRL on August 29, 1999, and received her DD 214 on that date. She was removed from the TDRL on November 2, 2001, but did not submit her application to the BCMR until September 14, 2015, about fourteen years later. Therefore, the preponderance of the

evidence shows that the applicant knew of the alleged errors in her record no later than November 2001, and her application is untimely.

3. Pursuant to 10 U.S.C. § 1552(b), 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, 164 (D.D.C. 1992), the court stated that to determine whether the interest of justice supports a waiver of the statute of limitations, the Board “should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review.” The court further instructed 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.” *Id.* at 164, 165; see also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

4. The applicant argued that it is in the interest of justice for the Board to consider her application because she was recently hired by the federal government and is unable to buy back her service time because Block 23 of her DD 214 states that she was retired from the Coast Guard. If any of the alleged errors on the applicant’s DD 214 actually prevented her from buying back her active duty time, which she has not proven, the Board would find her argument compelling. However, she has not shown that her DD 214 must be changed for her to buy back her time.

5. A cursory review of the merits of this case indicates that the applicant’s claim cannot prevail because her DD 214 does not contain the errors or omissions she claims that it does. First, she argued that block 11 of her DD 214 should be corrected to show that she was a [REDACTED], but this is incorrect because she was an enlisted member, and Chapter 1.E. of COMDTINST M1900.4D states that block 11 should indicate “NA” for enlisted members. Moreover, her rate as a [REDACTED] is shown in block 4.a. of the DD 214 and her completion of [REDACTED] “A” School is shown in block 14. Second, the applicant argued that block 13 should list all of the decorations, citations, and training that she earned/completed during her service. However, her record does not contain any evidence to show that she earned any medals or awards during her service; nor did she submit any evidence to show that she earned any. Accordingly, block 13 of her DD 214 appears to be correct. Finally, although the applicant argued that block 23 of her DD 214 should indicate that she was discharged from active duty instead of retired, she is mistaken. The DD 214 documents her active duty from January 13, 1997, to August 29, 1999, and so block 23 properly indicates that she was “retired” upon leaving active duty since she was placed on the TDRL. Chapter 1.E. of COMDTINST M1900.4D states that block 23 shall contain the type of separation effected: “DISCHARGED”, “RELEASED FROM ACTIVE DUTY”, “RETIRED”, “RESIGNED”, “COMMISSION REVOKED.” When the applicant was placed on the TDRL she was not discharged or released from active duty, so the inclusion of “Retired” in block 23 of her DD 214 is correct.

6. The applicant also alleged that her status as temporarily retired should have been changed once she was discharged and that block 23 of her DD 214 should have been changed to reflect this. The Board disagrees. Her DD 214 should not have been changed to reflect a conventional discharge when she was removed from the TDRL because Chapter 1.B.3. of COMDTINST M1900.4D, the manual for preparing the DD 214, states that the form must be accurate as of the date of separation from active duty and that members who are being removed

from the TDRL will not receive a DD 214. Moreover, the applicant received a copy of the Coast Guard's November 2, 2001, letter notifying her that she was being discharged by reason of physical disability as of that date, and she has not shown that the letter does not suffice as proof that she was discharged on November 2, 2001. The Board notes that she did not respond to the Coast Guard's advisory opinion after receiving a copy of this letter.

7. The record contains no evidence that substantiates the applicant's allegations of error or injustice in her official military record, which is presumptively correct.<sup>3</sup> Based on the record before it, the Board finds that the applicant's claim 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)**

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<sup>3</sup> 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] USCG, for correction of her military record is denied.

August 5, 2016

