

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-047



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 application on February 2, 2016, upon receipt of the applicant's completed application and military records, and prepared the draft decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated December 2, 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 his discharge form DD 214 to show that he entered active duty on February 1, 1963, instead of August 6, 1963. He alleged that his DD 214 currently does not accurately reflect all of his active service. He alleged that he served on active duty beginning on February 1, 1963, and that there should be medical records, vessel logs, and pay records proving his active service. He stated that he was directed to take a "pre-physical" in March 1963 and received orders to report for training a few weeks later. He stated that in May and June 1963, he attended training on military law "to become a person who may carry military documents." He stated that he was injured in May 1963, reported for sick call, and was sent to a medical facility in [REDACTED].

The applicant stated that in August 1963, he reported to the training center in Alameda, California, for thirteen weeks of training, after which he served aboard a cutter based in Seattle.

The applicant stated that in September 1974, he was discharged from the Reserve because he failed a hearing test. He alleged that February 1, 1963, should be the date of entry on his DD 214, and he asked for a copy of a letter that was sent to him regarding his retirement in the 1970s. In support of his allegations, the applicant submitted copies of the following:

- The applicant's DD 214, issued on February 5, 1964, shows that as a member of the Coast Guard Reserve he served exactly six months on active duty for training from

August 6, 1963, through February 5, 1964, and that he had previously served 1 month, 13 days of “other” (inactive) service in the Reserve.

- A certificate shows that the applicant completed recruit training on November 1, 1963.
- A certificate shows that the applicant completed a two-week engineman training course on September 3, 1965.
- A certificate shows that the applicant advanced to engineman third class in the Reserve on January 1, 1966.
- A certificate shows that the applicant was appointed an engineman second class in the Reserve on January 1, 1967.
- A certificate shows that the applicant advanced to engineman first class in the Reserve on July 1, 1968.
- A certificate shows that the applicant was honorably discharged from the Reserve when his enlistment expired on May 23, 1971.
- The applicant’s Armed Forces identity card, issued on October 18, 1971, shows that he was a member of the Reserve. The “end date” on the card states “indefinite.”
- A certificate shows that the applicant completed a two-week course of instructor training on February 18, 1972.
- A certificate shows that the applicant was honorably discharged from the Reserve when his enlistment expired on September 30, 1974.

SUMMARY OF THE RECORD

On April 2, 1963, the applicant signed an application to enlist in the Coast Guard Reserve for eight years as a seaman recruit.

On May 24, 1963, the applicant signed an eight-year Reserve enlistment contract, as well as a “Certificate of Obligated Service upon Enlistment in Coast Guard Reserve and Assignment to the ‘Six-Month Training Program.’” On this certificate, he acknowledged that he was enlisting in the Reserve for eight years and that he “will be ordered to an initial period of active duty for training of not more than six months’ duration.” A Reserve “Information Sheet” in his record states that within ninety days of enlisting in the Reserve, he would be ordered to report for active duty for training for a period of six months and that, until that time, he would not be required to attend drills. The Information Sheet states that after completing the six-month training, he would be required to participate satisfactorily in the Reserve by drilling regularly and completing “not more than seventeen consecutive days of active duty for training each year.”

A “Chronological Record of Medical Care” shows that the applicant underwent a physical examination at the training center on August 7, 1963, and was treated for various minor ailments in August.

A “Six Month Training Record” states that the applicant reported to the training center on August 6, 1963, and was transferred to a vessel on November 1, 1963. He reported for duty aboard the vessel on November 5, 1963, and was transferred off the vessel on February 5, 1964.

An “Administrative Remarks” form states that on November 1, 1963, he “[s]atisfactorily completed twelve-week course in recruit training” and advanced to seaman apprentice. It also shows that he was transferred and reported for duty aboard a vessel on November 5, 1963.

The applicant’s DD 214 (“Certificate of Release or Discharge from Active Duty”), which he signed, shows that he had entered active duty on August 6, 1963, as a seaman recruit and was honorably discharged from six months of active duty for training on February 5, 1964, as a seaman apprentice.

After completing his six months of active duty for training, the applicant served in the Ready Reserve and advanced to E-6. He was discharged when his eight-year enlistment expired on May 23, 1971. On October 1, 1971, he reenlisted in the Reserve for another three years.

A “Record of Discharge, Release from Active Duty, or Death” dated September 30, 1974, shows that the applicant was discharged from the Reserve on that date because his enlistment had expired, but he was recommended for reenlistment. He had completed exactly 11 years of military service. There is no documentation of any subsequent military service in the Coast Guard or Coast Guard Reserve in the applicant’s military record.

VIEWS OF THE COAST GUARD

On June 22, 2016, the Judge Advocate General of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in accordance with the findings and analysis in a memorandum submitted for the case by Commander, Personnel Service Center (PSC).

PSC stated that the application is untimely and should not be considered beyond a cursory review. PSC also noted that the applicant did not justify his delay in applying to the BCMR.

Regarding the applicant’s claim, PSC stated that the applicant’s military records show that he applied to enlist on April 2, 1963; enlisted in the Reserve for eight years on May 24, 1963; was ordered to begin active duty for training and reported to the training center on August 6, 1963; completed recruit training on November 1, 1963; and served aboard a vessel until he was discharged on February 5, 1964, after exactly six months of active duty. PSC stated that after serving in the Reserve for several years, the applicant was discharged (not retired) on September 30, 1974. PSC stated that to qualify for retirement, a reservist must have completed twenty years of satisfactory service, and the applicant did not fulfill that requirement because he was a member of the reserve for approximately eleven years, rather than twenty. Therefore, PSC recommended that the Board deny relief.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

In response to the Coast Guard’s advisory opinion, the applicant argued that because the “end date” on his Armed Forces ID card states “indefinite,” he meets the requirements for retirement. He also stated that before reporting for basic training in August 1963, he was directed to go to a base in Seattle to get uniforms, which he took with him to basic training. The applicant stated that he drilled on four weekends in June and July 1963 before he began basic training and

returned to the same Reserve unit after completing training. Therefore, he alleged, his DD 214 should show more than six months of active duty.

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.¹ The record shows that the applicant received and signed his DD 214 documenting his active duty in 1964 and was discharged from the Reserve and sent a discharge certificate in 1974. Therefore, his application is very 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. The applicant provided no justification for having delayed his application for more than forty years, and the Board's cursory review of the records shows that his DD 214 is accurate and that he did not qualify for a Reserve retirement. Although the applicant may have, as he alleged, reported for duty at his Reserve unit before he began recruit training on August 6, 1963, Reserve duty without active duty orders is considered inactive duty, rather than active duty, and so may not be documented as active duty on a DD 214. Therefore, the date of entry on active duty shown on his DD 214—August 6, 1963—is correct because it is the first day of the six-month period of active duty for training he performed pursuant to active duty orders. The applicant's allegation regarding his “indefinite” membership in the Reserve and eligibility for retirement is also meritless because a Reserve retirement requires twenty years of “satisfactory service” for retirement purposes. To be credited with “satisfactory service” a reservist must earn at least fifty retirement points per year by drilling and performing annual training. The applicant was a member of the Reserve for just eleven years before he was discharged, and he chose not to reenlist when his Reserve enlistment ended even though he was recommended for reenlistment. There is no evidence that he was discharged due to hearing loss, as he alleged, or that he earned at least fifty points per year for twenty years by drilling and performing annual training.

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).

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. The record before the Board contains no evidence substantiating the applicant's allegations of error or injustice in his military record, which is presumptively correct.⁵ Therefore, the Board finds that the applicant's claim cannot prevail, and it is not in the interest of justice to waive the statute of limitations. 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)

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] USCGR, for correction of his military record is denied.

December 2, 2016

