

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-069



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 March 3, 2016, 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 January 13, 2017, 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, who served as [REDACTED] in the Coast Guard and was honorably discharged on December 18, 1985, after serving two years, eleven months, and fifteen days on active duty, asked the Board to correct her DD 214¹ to show that she was discharged after completing three full years of active duty. She stated that she requested an early separation to care for her first child and was allowed to separate approximately fifteen days before completing three years, but alleged that she would have remained on active duty for the full three years if she had been told that serving less than three years on active duty would prevent her from receiving certain veterans benefits in the future.

In support of her application, the applicant submitted a copy of her DD 214 which shows that she enlisted in the Coast Guard on January 3, 1983, and was honorably discharged on December 18, 1985. She also submitted a copy of an email exchange with an HR specialist at the Federal Aviation Administration, who explained that the applicant was not eligible for the

¹ The DD Form 214 provides the 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). 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. The DD 214 is issued to members who change their military status among active duty, reserve, or retired components or are separated/discharged from the Coast Guard to a civilian status. COMDTINST M1900.4D.

expanded veterans hiring opportunity because that program requires that a member's DD 214 reflect three years of active service and that the applicant's DD 214 does not reflect three years of active service.

The applicant stated that she discovered the alleged error on January 26, 2016, upon being told by several federal agencies that she was not eligible for a veteran's preference in hiring because she had not served three years of active service.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on January 3, 1983, for a term of four years, through January 2, 1987, and signed a one-month extension contract on September 18, 1984, to obligate service for [REDACTED] "A" School. On May 7, 1985, she submitted a request to be separated before her end of enlistment (EOE) date because she was expecting her first child on or about October 23, 1985. In her request for early separation, she noted that she did not feel that she could "continue my duties in the service and at the same time replenish adequate care for my child." She also noted that she has always been loyal to the Coast Guard but that the demands of service life were no longer compatible with her personal and family obligations.

On June 20, 1985, the Commandant granted the applicant's request for early separation and ordered that she be discharged five days after the anticipated delivery date of her child. He stated that her DD 214 should indicate that she was discharged for the convenience of the government and that she should receive an RE-3B (parenthood) reenlistment code.

On December 18, 1985, the applicant signed a CG-3307 ("Page 7") for her record, which states that she had read and been counseled on the contents of Article 12.B.53 of the Personnel Manual, COMDTINST M1000.6, concerning her rights on separation from the Coast Guard and that she understood those rights.

The applicant was discharged on December 18, 1985, and her DD 214 indicates that she was honorably discharged for the convenience of the government pursuant to the Commandant's message dated June 20, 1985, after serving two years, eleven months, and sixteen days on active duty. She received a KDG² separation code and an RE-3B reenlistment code.

APPLICABLE LAW AND REGULATIONS

Article 1.C of COMDTINST M19004B, the instructions for the preparation and distribution of the DD 214, states that block 12a. of the DD 214 shall indicate the date that the member entered active duty and block 12b. shall indicate the date the member was separated from active duty. Block 12c. shall indicate the net active service completed by the member during her enlistment.

² KDG denotes a voluntary discharge allowed by established directive when as a result of parenthood or custody of minor children, are subject to inability to perform proscribed duties, repetitive absenteeism, or nonavailability for worldwide assignment. Separation Program Designator (SPD) Handbook.

Article 12.B.53 of the Personnel Manual, COMDTINST M1000.6, provides general information on separations without immediate reenlistment, and Article 12.B.53.f. states that separating members shall be informed of their rights and benefits as a veteran before they depart from their last duty station. It also states that members shall be counseled about important veterans benefits such as re-employment rights; veteran's preferences in civil service, etc.

VIEWS OF THE COAST GUARD

On July 20, 2016, 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 argued that the application is not timely and should not be considered by the Board because the applicant was discharged in 1985 and did not provide any justification for the delay in submitting an application to the Board.

Regarding the merits, PSC argued that the applicant's request to increase her net service time to three years should be denied because she has not shown that her DD 214 is erroneous or unjust. PSC noted that the applicant requested an early separation from the Coast Guard, was counseled on December 18, 1985, regarding her rights after her separation, and signed the Page 7 acknowledging that she understood those rights as described to her and that she had all of her questions answered. PSC added that there is no justification within Coast Guard policy to provide this relief and therefore no change is recommended to the applicant's net service time.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 3, 2016, the BCMR sent the applicant a copy of the Coast Guard's views and invited her to respond within 30 days. She responded on August 25, 2016, and stated that she disagrees with the Coast Guard's recommendation.

The applicant argued that her application is not untimely because she did not discover that having less than three years of active duty was a problem until she was told by several federal agencies that she did not qualify for veteran's preference because she was 17 days shy of three years of active duty service.

The applicant also argued that her request for correction should be granted because she wanted to complete three years of service but that during her pregnancy she was approached by her commanding officer who asked if she wanted to separate from the Coast Guard to tend to her first born child. She stated that she had mixed emotions about separating early, but after discussing the matter with her husband decided to request an early discharge to be a stay-at-home parent with her first child. She argued, however, that she was misled to believe that not completing three years of service was inconsequential and argued that if she had been told that she would not receive veteran's preference for employment then she would have remained on active duty for a full three years before seeking an early discharge.

Finally, the applicant stated that she found the Coast Guard's recommendation "uncaring" and shows "no loyalty to this former Coast Guard member in her time of need."

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. An application to the Board must be filed within three years of an applicant's discovery of the alleged error or injustice in her military record.³ The applicant was discharged on December 18, 1985, but did not submit her application until 2016. The applicant argued that she did not discover the error on her DD 214 until 2016, when she learned that she is not entitled to a veteran's preference in hiring. However, the allegedly erroneous and/or unjust information that the applicant is asking the Board to correct is her date of discharge in block 12.b. on her DD 214 and her time on active duty in block 12.c. The applicant received and signed her DD 214 in 1985 and certainly knew her date of discharge and her time on active duty at the time of her discharge. Because the applicant knew her date of discharge and her time on active duty (the allegedly erroneous or unjust information she wants the Board to correct) in 1985 and did not file her application until 2016, the Board finds that the application is untimely.

2. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.⁴ 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"⁵ 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."⁶

3. The applicant did not justify her long delay in seeking correction of the alleged error and injustice on her DD 214. She alleged that she only recently learned that she does not qualify for a veteran's preference, but the Page 7 in her record dated December 18, 1985, shows that she was counseled in accordance with Article 12.B.53. of the Personnel Manual, and such counseling included counseling about veterans' benefits, including employment preferences in the civil service. The Page 7 is presumptively correct,⁷ and she has not submitted any evidence to show that she was not properly counseling in 1985.

4. The Board's cursory review of the merits shows that the applicant's claim cannot prevail. The record shows that she requested and was granted an early separation due to parenthood because she decided that service life was not compatible with her personal and

³ 10 U.S.C. § 1552(b).

⁴ 10 U.S.C. § 1552(b).

⁵ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁶ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396, 1405 n14, 1407 n19 (D.C. Cir. 1995).

⁷ 33 C.F.R. § 52.24.

family obligations. The record also shows that her request was granted by the Commandant, who ordered that she be honorably discharged for the convenience of the government under Article 12.B.12. of the Personnel Manual after the birth of her child, presumably so that her medical costs would be covered. The applicant has submitted no evidence that shows that her discharge date in 1985 was erroneous or unjust⁸ or that her time on active duty was miscalculated on her DD 214. Her desire for a veteran's preference is not a proper basis for adding extra days of active duty to her record that she did not perform.

5. Accordingly, the Board finds that it is not in the interest of justice to excuse the untimeliness of the application and will not waive the three-year statute of limitations. The application should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁸ *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976) (finding that, for the purposes of the BCMRs, "injustice" means "treatment by the military authorities that shocks the sense of justice but is not technically illegal").

ORDER

The application of former [REDACTED], USCGR, for correction of her military record is denied.

January 13, 2017

