

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-112

██████████.

FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case upon receipt of the applicant's completed application on April 22, 2016, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated February 3, 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 retired from the Coast Guard in 1994, asked the Board to correct the year of his birth on his DD 214 and in the DEERS retirement database from 1952 to 1951. All of his military records, including his enlistment documents, show that his date of birth is ██████████ 1952, but the applicant submitted an original, embossed copy of his birth certificate, from the State of ██████████, which shows that he was born on ██████████ 1951, as well as a copy of his passport with a birth date of ██████████ 1951. The place of birth and parents' names on the birth certificate are the same as those on his enlistment documents. The applicant also submitted a copy of his Social Security card showing that his Social Security number is the same as that in his military records.

The applicant stated that when he was registered for elementary school, the school was provided with a date of birth of ██████████ 1952, indicating that he was a year younger than he actually was. He stated that this error followed him all through his school years and for most of his life. When he enlisted in the Coast Guard in 1971, he had a copy of his school transcript, and the recruiter took his date of birth from that.

The applicant stated that his personal copies of his records were destroyed during Hurricane Katrina and when he started to replace them, he ordered a copy of his birth certificate and discovered the difference in his birth date. He stated that he discovered the error in his military records in 2007. He stated that he has already corrected his date of birth at the Social

Security Administration and other government entities. The applicant stated that he is now going to retire and receive benefits and he needs the date of his birth on his DD 214 to be corrected.

VIEWS OF THE COAST GUARD

On October 20, 2016, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant the applicant's request and adopted the findings and analysis in a memorandum prepared by the Personnel Service Center (PSC).

PSC noted that the applicant retired in 1994 and so his application is untimely. However, PSC recommended that the Board grant relief by correcting his date of birth to [REDACTED] 1951, based on the applicant's birth certificate even though all of his military records show that his date of birth is [REDACTED] 1952.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 25, 2016, the Chair sent the applicant a copy of the Coast Guard's advisory opinion 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 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 applicant was retired from the Coast Guard in 1994 but apparently discovered his true date of birth following Hurricane Katrina in 2005. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in 2005, 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.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. Although the applicant in this case did delay filing his application for a few years, the evidence he submitted reveals a significant, prejudicial error in his record, which could

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).

prevent him from receiving the retirement benefits he earned for completing more than 20 years of military service. Therefore, the Board finds that it is in the interest of justice to excuse the untimeliness of the application.

5. Although the date of birth in the applicant's military records is presumptively correct,⁵ the original, embossed birth certificate that he submitted bears the same parents' names and place of birth as those shown in his military record but a slightly different date of birth than that shown in the applicant's military records. Therefore, and in light of his Social Security number, the Board is persuaded that the applicant is the veteran who retired from the Coast Guard in 1994. The Board also finds that the applicant has proven by a preponderance of the evidence that the date of birth in his military records is erroneous and should be corrected to ■■■■■ 1951.

6. Accordingly, relief should be granted by directing the Coast Guard to correct the applicant's date of birth on his DD 214 and in DEERS.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁵ 33 U.S.C. § 52.24(b).

ORDER

The application of [REDACTED], USCG Retired, for correction of his military record is granted. The Coast Guard shall correct his date of birth on his DD 214, as well as in his electronic record in DEERS, to show that he was born on [REDACTED] 1951, rather than [REDACTED] 1952.

February 3, 2017

