

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-148



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 completed application on June 8, 2016, and assigned it to staff attorney [REDACTED] to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated April 7, 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, a former reservist, asked the Board to correct the discharge date shown in block 12.b. of her DD 214 and alleged that it erroneously fails to reflect her accurate discharge date from active duty. She stated that the date should read September 20, 2002, as opposed to July 14, 2002, which her DD 214 currently states. She claimed that her DD 214 "does not coincide with the dates of [her] orders." The applicant claimed that she discovered the alleged error on March 31, 2016, and provided no explanation for this date or the delay.

The applicant provided a copy of her DD 214, which she signed in 2002, and which states that she served on involuntary active duty under Title 10 from September 16, 2001, through July 14, 2002. The narrative reason for separation is "completion of required active service." The applicant also provided a Standard Travel Order, which states that the applicant was to report on September 8, 2002, for her annual active duty training (ADT). The remarks section states that the applicant was to complete 12 days of ADT to satisfy her Reserve requirement by September 20, 2002.

VIEWS OF THE COAST GUARD

On November 13, 2016, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case. In

making this recommendation, the JAG adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC stated that no relief should be granted because the applicant's record shows that she served under Title 10 orders from September 16, 2001, to July 14, 2002. PSC stated that the Department of Defense Instruction 1336.01 is controlling, which states that active duty service members must receive an accurate DD 214. Additionally, it states that members who complete "a period of active duty for training, full-time training duty, or active duty for special work will be furnished a DD Form 214 when they have served 90 days or more." PSC argued that the applicant received a DD 214 in accordance with this instruction.

PSC added that the applicant was ordered to complete a period of 12 days of consecutive ADT starting September 8, 2002, which was to be completed by September 20, 2002. This ADT time is unaffiliated with the active duty the applicant completed under Title 10. PSC stated that this time was ineligible to be captured on her DD 214 because it did not fall under her Title 10 orders and because it was not greater than 90 days. PSC therefore recommended that no relief be granted in this case.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 9, 2016 the Chair sent the applicant a copy of the views of the Coast Guard and invited her to respond. On December 7, 2016, the Chair received the applicant's response. The applicant provided a hand-written note, which states:

Orders started on 9-12-2001 Title 10...They were faxed and I saw but did not get a copy. Arrived at GST USCG Airstation Mobile September 12, 2001; Left September 16, 2001; NY/NJ September 16, 2001; Last at NJ/NY etc. July 14, 2002. But was never allowed to leave to 60 to my home off Title 10 until I completed this class, of which I sent a copy of orders. And there are copies of my other orders from 7-14-2002 to 9-[20]-200[2] all from GST mobile NEVER from GST to home.

The applicant provided copies of documents she and the Coast Guard had previously provided. She also provided a travel voucher for her travel on September 16, 2001. She provided one of two pages of a print-out regarding paid drill information; the information included covers October 2002 to December 2003.

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, or reasonably should have discovered, the alleged error or injustice.¹ The applicant was discharged from active duty in 2002 and received and signed her DD 214 at that time.

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

Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in her record in 2002, and her 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. Regarding the delay of her application, the applicant stated that it is in the interest of justice to consider her application so that her DD 214 accurately reflects her active duty service dates. The Board finds that the applicant’s explanation for her delay is not compelling because she failed to show that anything prevented her from seeking correction of the alleged error or injustice more promptly.

5. A cursory review of the merits of this case indicates that it lacks potential merit. The record contains no evidence that substantiates the applicant’s allegations of error or injustice in her official military record, which is presumptively correct.⁵ The applicant’s DD 214 states that she was discharged on July 14, 2002, and she signed her DD 214 at that time. If she had believed her DD 214 was incorrect, she presumably would have contested it then. Based on the record before it, which contains no documentation supporting the applicant’s claim that she served on active duty from July 15, 2002, through September 7, 2002, the Board finds that her claim cannot prevail on the merits.

6. 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 (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
of her military record is denied.



USCGR, for correction

April 7, 2017

