

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-172



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, including the applicant's military records on July 16, 2016, and prepared the decision as required by 33 C.F.R. § 52.61(c).

This final decision, dated May 12, 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 enlisted in the Coast Guard on June 11, 1952; was honorably discharged and transferred to the Reserve on June 12, 1956; and was honorably discharged from the Reserve on June 10, 1960. He asked the Board to correct his DD 214 documenting his discharge from active duty on June 12, 1956, to show that he was a radioman first class (RM1), instead of a radioman second class (RM2), and to ensure that he gets credit for pay purposes for his four years in the Reserve after his four years on active duty.

The applicant alleged that he was advanced to RM1 just before he began terminal leave before his discharge on June 12, 1956. However, he alleged, his advancement was not properly processed and entered in his record.

The applicant also alleged that he should receive "credit for pay purposes" for his four years in the Reserve and that people who have reviewed his DD 214 do not understand that his four years in the Reserve are creditable for pay purposes. The applicant noted that he performed his drills at the Naval Air Station in [REDACTED]. For example, he stated, the Forest Service gave him credit for only four years of service. He asked the Board to fix this problem.

The applicant alleged that he became aware of these issues when he received a Certificate of Appreciation from the Secretary of Defense in 2015, which indicates that he was a first class petty officer (PO1), rather than second class.

In support of his allegations, the applicant submitted copies of several documents and photographs. The documents that appear in the applicant's military record are included in the Summary of the Record below. The remainder include the following:

- A certificate shows that the applicant completed a 24-week Radioman School to earn RM rating on March 16, 1953.
- A liberty pass shows that the applicant was granted liberty on May 4, 1954, and that his rate at the time was RM2.
- The applicant's honorable discharge certificate dated June 10, 1960, shows that his rate upon his discharge from the Reserve was RM2 and that he had performed exactly eight years of service "for pay purposes."
- A 2015 Certificate of Appreciation signed by the Secretary of Defense, which addresses the applicant as a PO1 and recognizes his service during the Korean War.
- On a photograph of members training to be radiomen in a classroom, the applicant circled a person in the far back of the room. Another photograph shows the radioman class upon graduation.
- A photograph of a member in uniform with the shoulder badge of an RM1, which the applicant identified as himself.

SUMMARY OF THE RECORD

On June 11, 1952, the applicant enlisted on active duty in the Coast Guard for four years, and he incurred an eight-year total military service obligation. After completing recruit training on August 29, 1952, he advanced to seaman apprentice and was sent to "A" School for twenty-four weeks to train as a radioman and earn the RM rating. On March 16, 1953, the applicant completed RM "A" School and earned the RM designator, becoming an RMSN. Then he was transferred to a cutter based in [REDACTED], and advanced to RM3 on April 1, 1953. On May 1, 1954, he advanced to RM2.¹

On June 12, 1956, the applicant was honorably discharged from the Coast Guard and transferred to the Reserve to complete his military service obligation. His separation orders show he was still an RM2. His discharge form DD 214 documenting his discharge from active duty on June 12, 1956, shows that he had completed four years and two days of active duty and that his rate upon his discharge was RM2. The applicant signed his DD 214 as well as other documents concerning his discharge, such as the receipt for his mustering out pay, all of which show that his rate was RM2.

¹ The applicant's date of advancement to RM2 is noted as February 1, 1954, on some documents in his record.

Upon his discharge, the applicant was transferred to the Reserve to complete the remainder of his eight-year military service obligation. All of the orders and other documents in the applicant's military record dated during his time in the Reserve and all of the documentation concerning his discharge from the Reserve on June 10, 1960, show that his rate was RM2. This documentation includes several forms signed by the applicant and a letter that he signed and mailed to the Coast Guard after his discharge, on December 1, 1960, identifying himself as an RM2 and requesting that a copy of his honorable discharge certificate be sent to his new address.

In 1993, the applicant requested and was sent a copy of his DD 214. Since then, the applicant has had his record corrected three times—in 1998, 2007, and 2013—to reflect various medals and awards that he earned. None of the three requests mentioned any issue concerning the applicant's rate.

VIEWS OF THE COAST GUARD

On January 9, 2017, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion and recommended that the Board deny relief in this case. The JAG adopted the findings and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC).

PSC stated that the applicant's active duty is properly documented on his DD 214 dated June 12, 1956, and should not be changed to show eight years of active duty. PSC explained that under the applicable manuals, reservists do not receive DD 214s unless they perform extended periods of active duty of 90 days or more or for a contingency operation. Because the applicant did not perform such a continuous period of active duty while he was a reservist, PSC argued, he is not entitled to another DD 214.

PSC also stated that the applicant's record does not support his claim that he was ever advanced to RM1. PSC argued that the photograph the applicant submitted showing a member in an RM1 uniform is insufficient to prove that the applicant ever advanced to RM1.

PSC concluded that the applicant has not proven by a preponderance of the evidence that his active duty time documented on his DD 214 is erroneous or that he was advanced to RM1. PSC noted that his record has already been corrected to reflect all of the medals he is entitled to wear and recommended that the Board deny relief.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

The applicant disagreed with the views of the Coast Guard. He stated that when he submitted a request for terminal leave, his superior congratulated him for making RM1 within four years; handed him an RM1 patch; told him that if he went downstairs, someone would sew the patch on his uniform; and then approved his terminal leave. He repeated his allegation that his advancement was not properly entered in his military record. He also alleged that his DD 214 should reflect eight years 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 submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of the United States Code.

2. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.² The applicant stated that he discovered the alleged errors on his DD 214 in 2015. However, the record shows that the applicant received and signed his DD 214 upon his discharge from active duty in June 1956, and he sent a signed letter to the Coast Guard in December 1960, after his discharge from the Reserve, on which he indicated that his rate was RM2. Therefore, the preponderance of the evidence shows that the applicant knew what rate and amount of service was entered on his DD 214 upon his discharge, and his application is very untimely as it should have been filed no later than 1963.

3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.³ 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”⁴ 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.”⁵

4. Regarding the delay of his application, the applicant did not explain his failure to challenge his rate and time in service within three years of his discharge or when he sought correction of his DD 214 in 1998, 2007, and 2013. The fact that in 2015 the applicant received a certificate signed by the Secretary of Defense that indicates that he was a PO1 does not justify the applicant's long delay because he has not shown that anything prevented him from seeking correction of the alleged errors more promptly.

5. The Board's review shows that the applicant's claim that he was advanced from RM2 to RM1 has no merit. His military personnel file contains no documentation showing that he was advanced to RM1, and it contains dozens of documents, including documents that he signed, showing that his rate was RM2 when he was discharged from active duty in June 1956 and when he was discharged from the Reserve in June 1960. In fact, his file contains a letter that he signed and mailed to the Coast Guard on December 1, 1960, identifying himself as an RM2 and requesting that a copy of his honorable discharge certificate be sent to his new address. The applicant's official military records showing that he remained an

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

³ 10 U.S.C. § 1552(b).

⁴ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁵ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396, 1405 n14, 1407 n19 (D.C. Cir. 1995).

RM2 are presumptively correct,⁶ and his photograph with a PO1 uniform and the certificate the Secretary of Defense sent him in 2015 are insufficient to cast doubt on the accuracy of his Coast Guard records.

6. The applicant's claim that his time in the Reserve should be documented on his DD 214 likewise lacks merit. Under COMDTINST M1900.4D, DD 214s must be accurate as of the date they are issued. The applicant's DD 214 was issued on June 12, 1956, to document his discharge from the Coast Guard with four years and two days of active duty from June 11, 1952, through June 12, 1956, and is accurate as of the date of his discharge from the Coast Guard. Moreover, his DD 214 shows that he was transferred to the Coast Guard Reserve to complete his eight-year military service obligation. The fact that his time in the Reserve from June 1956 to June 1960 counts as creditable service "for pay purposes," does not mean that it counts as full-time active duty or that it should be documented on a DD 214 issued upon his discharge from active duty in June 1956. As the Coast Guard noted, under COMDTINST M1900.4D, reservists are entitled to DD 214s only when they are discharged from a continuous period of active duty of at least 90 days or when they are discharged from active duty performed under Title 10 orders for a contingency operation. As a reservist, the applicant did not meet these criteria.

7. Although the applicant is not entitled to a second DD 214, he is, like every veteran, entitled to official documentation of his total military service, including his active duty and inactive duty. Therefore, although the application was untimely and the applicant's particular requests for corrections lack merit, the Board will direct the Coast Guard to issue the applicant a Verification Letter of Service to document his total military service, both active and inactive.

(ORDER AND SIGNATURES APPEAR ON PAGE)

⁶ 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] USCG, for correction of his military record is denied, except that the Coast Guard shall issue him a Verification Letter of Service to document his total military service in the Coast Guard and Coast Guard Reserve.

May 12, 2017

