

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-007



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 application and the applicant's military records on October 13, 2016, and assigned the case 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 July 21, 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, whose name appears in bold type in the caption above, claimed that he is the veteran with the name appearing second in the caption above, who served on active duty in the Coast Guard for four years and received an honorable discharge in 1984. He has asked the Board to correct his last name on his DD 214 and throughout his military records to the last name shown on his birth certificate, which, he alleged, is his legal name and the name he has used ever since leaving the Coast Guard. The applicant claimed that when he enlisted in the Coast Guard in 1980 his parents required him to use his stepfather's last name even though it was not his legal name. In support of his application, he submitted a copy of a birth certificate issued by the State of Oklahoma, which indicates that the name given to him by his parents at birth, which was a "single birth," was the name in bold in the caption above. The birth certificate also shows that his mother's and father's last name was the same last name that the applicant is currently using. The applicant also submitted copies of his driver's license and social security card, both of which show the name listed in bold in the case caption. The applicant stated that he discovered the alleged error in his record on March 30, 2016.

SUMMARY OF THE RECORD

The veteran enlisted in the Coast Guard at age 20 on September 15, 1980, and served until October 11, 1984, when he was honorably discharged at the end of his enlistment. His Coast Guard record contains his May 30, 1980, Application for Enlistment. On this Application for Enlistment, the social security number (SSN) entered by the veteran in 1980—and used throughout his military records—is the same SSN as the one shown on the applicant’s social security card, a copy of which he submitted. In addition, the date and place of birth and first and middle names of the veteran and the full maiden name and date of birth of the veteran’s mother on the Application for Enlistment are the same as those shown on the birth certificate submitted by the applicant. However, on his Application for Enlistment, the veteran entered the name of a man—allegedly the applicant’s stepfather—with a different name than the father shown on the applicant’s birth certificate. The veteran’s last name as shown on the Application for Enlistment and throughout his military record is the same as the father’s (allegedly, the stepfather’s) last name on the Application for Enlistment.

In Part IV of the veteran’s Application for Enlistment, the Coast Guard recruiter certified that he had verified the veteran’s name, date, and place of birth from his birth certificate. However, his Coast Guard record does not contain a copy of said birth certificate. His record does contain a copy of the veteran’s social security card, however, which bears the same SSN as the one on the applicant’s social security card but the veteran’s last name.

The Board’s search of public records electronically available through Westlaw revealed no records under the veteran’s name associated with the veteran’s SSN but three records with the applicant’s name associated with the veteran’s SSN, the oldest of which is dated 1994.

APPLICABLE REGULATIONS

Under COMDTINST M1900.4D, the Commandant’s instruction for preparing DD 214s, “[a]ll entries [on the DD 214], unless specified otherwise (i.e., block 7a,7b), are for the current period of active duty only from the date of entry as shown in block 12a through the date of separation as shown in block 12b.”

VIEWS OF THE COAST GUARD

On March 9, 2017, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he adopted the findings and analysis provided in a memorandum on the current case submitted by the Commanding Officer, Coast Guard Personnel Service Center (PSC), who recommended the Board deny relief.

PSC stated that the application should be denied due to untimeliness because the applicant was discharged in 1984 and did not provide sufficient justification for the untimeliness of his application. Regarding the merits of the case, PSC argued that the applicant applied for enlistment using the former name in the case caption above and that the Coast Guard recruiting officer certified on the application for enlistment that he had personally reviewed the applicant’s documents and had verified his name and place of birth from his birth certificate. Moreover, PSC argued, the applicant provided the recruiter with a copy of his social security card which matched the name on the applicant’s Application for Enlistment. PSC argued that although the applicant

has provided a copy of a birth certificate containing his current last name, he enlisted in the Coast Guard under his former name in the case caption above. PSC argued that based on the evidence submitted by the applicant, he changed his last name after his separation from the Coast Guard, and according to Coast Guard policy, his record rightly shows the former name that he used during his service in the Coast Guard.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 31, 2017, the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. The BCMR did not receive a response.

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 10 U.S.C. § 1552. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.¹ The applicant was discharged from the Coast Guard on October 11, 1984, but did not submit his application until May 17, 2016. The Board finds that the preponderance of the evidence shows that the applicant knew long ago that the name in his military records was not his legal name. Therefore, the Board finds that his application is untimely.

2. Pursuant to 10 U.S.C. § 1552(b), the Board may excuse the untimeliness of an application if it is in the interest of justice to do so. In *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that to determine whether the interest of justice supports a waiver of the statute of limitations, the Board "should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review." The court further instructed 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." *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995). Although the applicant in this case delayed filing his application, as explained below, he has submitted substantial evidence indicating that the last name shown on his DD 214 may be wrong. Because it is extremely important for a veteran's DD 214 to show the veteran's legal name at the time he served so that the veteran can obtain veterans' benefits, the Board finds that it is in the interest of justice to excuse the untimeliness of the application.

3. The applicant alleged that the last name listed in his Coast Guard records is incorrect because he enlisted when his mother and stepfather required him to use his stepfather's last name instead of the last name on his birth certificate. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.²

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

² 33 C.F.R. § 52.24(b).

Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”³

4. The applicant has proven by a preponderance of the evidence—in fact by clear and convincing evidence—that he is the veteran whose name appears below his in the case caption above. The applicant’s birth certificate, SSN card, and driver’s license and the veteran’s military records show that the applicant’s first and middle names are the same as those of the veteran, his SSN is the same as that of the veteran, his date and place of birth are the same as those of the veteran, and the full maiden name and age of his mother are the same as those of the veteran. The birth certificate reflects a single birth, and it is extremely unlikely that anyone else was born on the veteran’s date of birth, in the veterans’ place of birth, with a mother of the same name. The only difference in the records is that the veteran’s last name and father’s name shown in the military records are not those reflected on the applicant’s birth certificate. The applicant explained that as a young man, his parents required him to use his stepfather’s last name even though it was not his name.

5. The record shows that the applicant used a different last name, which was not the last name on his birth certificate, when he served in the Coast Guard from 1980 to 1984. The name on his birth certificate was not necessarily his legal name from 1980 to 1984, however, because the applicant’s mother and stepfather could have legally changed his name by court order or adoption decree (and the applicant could have legally changed his name back to his birth name by court order as an adult). The old social security card in the applicant’s military record is evidence that his last name had been legally changed as a child to his stepfather’s last name, but documents other than his birth certificate could have been submitted to the Social Security Administration to prove his citizenship and identity for the purpose of receiving a social security card for the applicant.⁴ His parents could have submitted school or baptismal records that showed the applicant’s stepfather’s last name, instead of his birth certificate, to obtain his SSN.

6. Under COMDTINST M1900.4D, the applicant’s DD 214 should be accurate as of the date it was issued and so it should show his legal name on his date of discharge. The applicant has submitted a birth certificate and a driver’s license, which show that his current legal name is the name on his birth certificate. It is possible that the applicant’s name was legally changed before he enlisted and changed back after his discharge from the Coast Guard (or that it was legally

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁴ The earliest version of this regulation available to the BCMR staff is dated 1984. At that time § 422.107 of the Social Security Administration’s regulations in Title 20 C.F.R., titled “Evidence requirements,” provided that SSN applicants had to submit evidence of “true identity,” date of birth, and citizenship or alien status. Submission of birth certificates was encouraged to prove the date of birth and citizenship, but baptismal records and school records were also accepted. To prove their identity, SSN applicants were required to submit corroborative evidence, such as a driver’s license, in addition to the birth certificate or baptismal or school records. However, for a child under 7 years of age, a birth certificate was sufficient to prove identity, provided “there is no other evidence of identity and there is no reason to doubt the birth certificate or the social security number application.” 20 C.F.R. § 422.107(c). No provision expressly explains how to apply for an SSN if your legal name is no longer the name on your birth certificate, but pursuant to 20 C.F.R. § 422.110, an individual could request a change of name by submitting proof of identity, such as a driver’s license. These regulations are similar to current regulations about these matters, except that a birth certificate is no longer sufficient to prove the identity of someone under the age of 7, except pursuant to birth registration by the State vital statistics office. 20 C.F.R. § 422.103(c)(2).

changed and but not changed back). However, it is impossible for the applicant to prove a negative—i.e., that his name was not legally changed by a court order or adoption decree before he enlisted. Moreover, as explained in finding 4, above, the Board is convinced that the applicant is in fact the veteran in question and so is not concerned about the possibility of identity theft in this case. The applicant has a strong interest in being able to prove his military service for various important purposes and may have great difficulty doing so—as he alleged—unless the name on his DD 214 matches the name on his birth certificate and driver’s licenses. The Board notes that unlike someone whose post-discharge legal name change can be proven by production of a court order or other State documentation, the applicant’s post-discharge name change is not provable, assuming, as he alleged, that he simply reverted to using his legal name on his birth certificate.

7. Accordingly, the Board finds that the applicant’s request should be granted in part in the interest of justice. Although he asked the Board to correct his name in all of his military records, he has not shown that correcting his name in all of his military records is warranted. Veterans rely on their DD 214s to prove their military service for the purposes of employment or benefits. Therefore, the Board finds that the applicant’s DD 214 should be corrected by the issuance of a DD 215 showing that his last name is the one shown on his birth certificate and driver’s license. In addition, the DD 215 should correct the Remarks section of the DD 214 to state, “Action taken pursuant to order of BCMR.” The Coast Guard shall also enter a copy of this decision in the applicant’s military record to explain why the name on his new DD 215 does not match the name on all of his other military records.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former [REDACTED] USCG, now known as [REDACTED], for correction of his military record is granted in part. The Coast Guard shall issue him a DD 215 to correct his DD 214 to show the name on his birth certificate: [REDACTED]. In addition, the DD 215 shall correct the Remarks section of the DD 214 to state, "Action taken pursuant to order of BCMR." The Coast Guard shall also enter a copy of this decision in his military record to explain why the name on his new DD 215 does not match the name on all of his other military records.

July 21, 2017

