

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-070



FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the completed application on February 8, 2017, 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 October 19, 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 Captain who retired on July 31, 1978, asked the Board to correct his record by including his service in the Merchant Marines from 1942 to 1945 as active duty on his Coast Guard DD 214.¹ He stated that he has previously made this request via alternate avenues and his request has been denied. He asserted that the denials have been based on a "general rule that Merchant Marine service is not eligible for USCG benefits." He stated that many officers upon retirement in the 1970s "applied for and received this award." The applicant argued that there is an exception to the rule and requested that the Board consider his application in the interest of justice.

The applicant explained that Public Law 219 (P.L. 219) created an exception to the rule that Merchant Marines were not eligible for Coast Guard benefits. Merchant Marine personnel affairs were administered by the Department of Commerce, Bureau of Marine Inspection and Navigation (BMIN) from 1942 to 1943 and thereafter by the Coast Guard. According to the applicant, the purpose of P.L. 219 was to address a problem that occurred when BMIN staff were gradually retiring. The Coast Guard did not have enough trained personnel to replace these individuals, so P.L. 219 was passed in 1947. The law authorized the recruitment of a limited number of Merchant Marine officers to be directly commissioned as a Lieutenant into the Coast Guard. The law allowed the Coast Guard to recruit "licensed officers of the United States

¹ A DD 214 is prepared to document a member's release or discharge from a period of active duty.

Merchant Marine who have served four or more years aboard a vessel of the United States in the capacity of a licensed officer.”² The applicant asserted that at that time, in order to be a licensed officer, a member would need six to eight years of sea service experience. This meant that a member “would have had to acquire such experience while serving in the Merchant Marine during WWII.”

The applicant argued that being a Merchant Marine was a prerequisite to take advantage of this law, and this is “not currently being acknowledged.” He argued that Merchant Marine wartime service was a requirement for admission into the Coast Guard and therefore should “retain its legitimacy as a USCG benefit.” He stated that he served during the entire period of World War II from 1942 to 1946 as a crew member on a cargo vessel under the control of the United States Navy. He stated that casualty losses were proportionate to other armed services. Therefore, the applicant stated, he is merely requesting that his service during World War II and his 27 years in the Coast Guard be consolidated on one DD 214 for a total of 31 years of service.

The applicant explained that he has previously made this request to the Coast Guard Pay and Personnel Division. He stated that his request was denied on the basis of lack of jurisdiction. He claimed that this was not the correct determination because P.L. 219 gives the Coast Guard jurisdiction over such claims. He added that he has sent this request to various offices, including the Department of Veterans’ Affairs (VA), and he has not received a response.

In support of his application, the applicant provided various documents, some of which are described below in the Summary of the Record. In addition, the applicant provided a copy of a Discharge from the Army Transport Service, which states that the applicant’s time of service was from September 1, 1942, to October 20, 1942. He submitted a Certificate of Discharge from the Bureau of Marine Inspection and Navigation, which states that his date of discharge was March 19, 1944. A Certificate of Discharge from the Coast Guard, not a DD 214, was provided with the date of discharge as October 14, 1944. He also provided a Certificate of Proficiency in Wartime Merchant Ship Communications, dated August 8, 1944, and a Master License for Radar Observer from the Coast Guard, dated June 26, 1987.

The applicant also submitted copies of undated letters he sent to the U.S. Military Retired Pay office, the VA, and the Coast Guard Pay and Personnel Center regarding this issue. The Pay and Personnel Center responded to the applicant’s letter on October 7, 2015, and stated that the documents he had provided were “for benefits related to the Department of Veterans’ Affairs, as stated on line 18 of the DD 214.” The letter further instructed the applicant to refer to the VA for benefits for which he might be eligible. The applicant received another letter regarding this request on October 28, 2015, stating that the Pay and Personnel Center had reviewed his request and determined that his “time served in the Merchant Marine does not count towards additional time for retirement.” However, the letter notes that the time served in the Merchant Marine can be used for VA purposes.

The applicant sent a response to the October 28, 2015, letter requesting further review of his request “based upon significantly different evidence which likely was not available for...evaluation.” He stated that many veterans made “timely requests” that their time in the

² P.L. 219, Section 3.

Merchant Marine be included “in their total benefit” and their requests were “favorably awarded.” Based on the same allegations and evidence submitted to this Board, he requested an appeal of Pay and Personnel Center’s denial of his request. On August 15, 2016, the applicant sent a follow-up letter stating he had not received a response from his previous letter. In the letter, he also claimed that the remark in his Merchant Marine DD 214 stating that it had been created “solely for the purpose of the Department of Veterans Affairs benefits” was in error. A VA Regional Office sent an undated letter to the Pay and Personnel Center on behalf of the applicant requesting a response to his previous request. On November 6, 2016, the applicant sent a letter regarding the same request to the Coast Guard National Maritime Center. On December 15, 2016, the applicant received a letter from the National Maritime Center, which states that per Public Laws 95-202 and 105-368 only Merchant Marines who sailed in ocean-going service during World War II while holding Coast Guard credentials are eligible for a DD 214. They were therefore unable to combine any of the applicant’s merchant marine service with his active duty DD 214.

The applicant provided a copy of a letter from the VA dated December 12, 2016. The letter states that the applicant’s service dates include his time in the Merchant Marines from October 31, 1942, to November 4, 1946, and his time in the Coast Guard from May 23, 1951, to July 31, 1978.

SUMMARY OF THE RECORD

The applicant received a DD 214 for his time in the Merchant Marine service. The DD 214 states that he served with the “USCG – Merchant Marine” from October 31, 1942, to November 4, 1946. The remarks in block 18 state the following:

This document is issued under the provisions of Public Law 95-202 (38 USC 106 NOTE) for dates of service between 7-DEC-1941 and 15-AUG-1945, and under Public Law 105-368 (46 USC Chapter 112) for dates of service between 16-AUG-1945 and 31-DEC-1946. Under Public Law 95-202 this document administratively establishes active duty service solely for the purposes of Department of Veterans Affairs benefits. Under Public Law 105-368 it administratively establishes active duty service for benefits under Chapter 32 (relating to burial benefits) and Chapter 24 (relating to interment benefits) of Title 38 United States Code.

The applicant also received an Honorable Discharge certificate for his discharge on November 4, 1946. The bottom left-hand portion of the certificate states “Issued pursuant to P.L. 95-202 for service in the American Merchant Marine between December 7, 1941, and December 31, 1946.”

On April 30, 1978, the applicant requested that his retirement from the Coast Guard be effective on August 1, 1978. He stated that his pay base date was May 23, 1951. Prior to the applicant’s retirement, he received a statement of all creditable service on July 6, 1978. The earliest period of creditable service begins on May 23, 1951. The total amount of creditable service is twenty-seven years, two months, and eight days as of July 31, 1978.

The applicant retired from the Coast Guard on July 31, 1978. He received a DD 214 that covered the entire period from when he entered the Coast Guard on May 23, 1951. It states that the applicant served for twenty-seven years, two months, and eight days on active duty. No prior active service or prior inactive service is noted.

VIEWS OF THE COAST GUARD

On June 26, 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 prepared by the Personnel Service Center (PSC) and recommended denying relief.

PSC stated that according to the Release from Active Duty, DD Form 214 manual, M1900.4B, block 12B of a DD 214 will include “the years, months, and days of service creditable for basic pay for all active service prior to the date entered in block 12a.” According to 37 U.S.C. § 205, service in the Merchant Marines is not included as qualifying service for retirement or creditable pay purposes. Public Law 95-202 states that service in the Armed Forces in a contractual capacity shall be considered active duty for the purposes of laws administered by the Secretary of the VA. Merchant Marine service was considered to be qualified service, and certain members were eligible for a Certificate of Release of Discharge from Active Duty and discharge certificate. Public Law 105-368, Section 402 states that the qualified service of Merchant Marines between August 16, 1945, and December 31, 1946, was deemed active duty for certain benefits such as burial flags and interment benefits. Merchant Marine service after August 15, 1945, did not establish compensation eligibility.

PSC stated that the application is untimely and argued that the applicant has not proven by a preponderance of the evidence that his record is erroneous or unjust. The applicant was properly issued a DD 214 for administrative purposes and an honorable discharge certificate retroactively to denote his service in the Merchant Marines in support of the Coast Guard during World War II. PSC stated that there is no statutory authority to include the Merchant Marine service as active duty on the applicant’s Coast Guard DD 214. Therefore, PSC recommended that the Board deny relief and make no changes to the applicant’s DD 214.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 28, 2017, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to submit a response within thirty days. On July 25, 2017, the applicant submitted a response and stated that he disagreed with the Coast Guard’s advisory opinion. Regarding the timeliness of his request, he stated that this application “was a matter of circumstance.” He explained that when he retired from the Coast Guard in 1978, he began a career in the private sector which lasted for twelve years and provided some retirement benefits. Now the applicant is in his nineties and is attempting to ensure that he receives all of the income that is due to him, as much of his savings and pension has been spent on medical bills or has expired. He requested that the Board consider his application in the interest of justice.

Regarding the Coast Guard’s reliance on Public Laws 95-202 and 105-368, the applicant stated that these laws were not “likely germane during the period under consideration.” He noted that the benefits he received from the VA based on the new DD 214 covering his service in the Merchant Marines “had already been obtained due to [his] application and subsequent approval of Veterans status.” He again argued that P.L. 219, unlike Public Laws 95-202 and 105-368, does address his claim, and he stated that he was “disappointed that the ‘Advisory’ did not acknowledge this feature.” The applicant reiterated the arguments he made in his initial application. He stated

that P.L. 219 was created to address special needs of the Coast Guard, and therefore deserves “an open-minded review.” The applicant took issue with the fact that the Coast Guard’s opinion completely ignored this law and merely rejected the applicant’s request. He added the following:

I began as an ordinary seaman just before the United States officially engaged in WWII. Over the next nine years, including all of WWII, I progressed up through the ranks to Captain. My experience aboard the Merchant Marine Vessels during WWII enhanced my ability to perform beneficially for the Coast Guard. Upon transferring to the Coast Guard under the Public Law 219, I furthered my sea bearing career, entering as a Lieutenant, and retiring as a Captain.

He went on to note the medals he received while serving with the Coast Guard and a few of his notable accomplishments. Lastly, he reiterated that his Merchant Marine service “answered the Coast Guard’s need for experienced personnel” after the passage of P.L. 219. He requested that the Board include his time in the Merchant Marines on his Coast Guard DD 214.

APPLICABLE LAWS

Public Law 219, passed on July 23, 1947, authorized the integration of certain personnel of the BMIN and the Bureau of Customs into the Coast Guard. Section 3 provided that certain categories of personnel, including “[l]icensed officers of the United States merchant marine who have served four or more years aboard a vessel of the United States in the capacity of a licensed officer,” Coast Guard Academy graduates, Reserve members, and certain BMIN personnel, could be appointed as permanent commissioned officers of the Coast Guard.

Section 401 of Public Law 95-202, also known as the GI Bill Improvement Act of 1977, amended Title 38 of the United States Code, “Veterans’ Benefits,” to establish that the service of any person who rendered service to the Armed Forces in a capacity considered contractual service at the time such service was rendered “shall be considered active duty for the purposes of all laws administrated by the Veterans’ Administration,” based on regulations to be prescribed by the Secretary of Defense. Service in the Merchant Marines was deemed “qualified service” under this statute, and it was directed that Merchant Marines who met certain eligibility criteria be issued a DD 214 (Certificate of Release or Discharge from Active Duty) and a Discharge Certificate.

Section 402 of Public Law 105-368 amended Title 38 of the United States Code, “Veterans’ Benefits,” to provide that qualifying service in the Merchant Marines between August 16, 1945, and December 31, 1946, “shall be considered to be active duty in the Armed Forces during a period of war for purposes of eligibility for benefits under the following provisions of title 38: (A) Chapter 23 (relating to burial benefits). (B) Chapter 24 (relating to interment in national cemeteries).”

Title 37 U.S.C. § 205 governs how to compute a member’s total service creditable for pay purposes. Section 205 lists all types of active service that qualify as active duty for this section, and service in the Merchant Marine is not included in the list.

Title 10 U.S.C. § 1405 states that a member’s retired pay is based on his years of “active service,” which is defined at 10 U.S.C. § 101(d)(3) as “service on active duty or full-time National Guard duty.” Title 10 U.S.C. § 101 defines active duty as “full-time duty in the active military

service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned.”

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.³ The applicant retired from the Coast Guard in 1978 and received his Coast Guard DD 214 showing his years of service at that time. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in 1978, 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.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
4. Regarding the delay of his application, the applicant explained that his application is a matter of circumstance, as he was receiving retirement benefits from the Coast Guard and his career in the private sector. However, now that he is older, he is requesting correction to his military record so that he can collect retirement benefits from the time he served in the Merchant Marines. The Board finds that the applicant’s explanation for his delay is not compelling because he failed to show that anything prevented him from seeking correction of the alleged error or injustice more promptly.
5. A cursory review of the merits of this case indicates that the applicant’s claim is without merit. The record contains no evidence that substantiates the applicant’s allegations of error or injustice in his official military record, which is presumptively correct.⁷ The applicant’s argument rests on P.L. 219, which authorized the commissioning of Coast Guard officers from certain categories of people, including Merchant Marines. However, the fact that Congress authorized the commissioning of merchant mariners as Coast Guard officers does not mean that Congress authorized their service in the Merchant Marine to count as active duty time in the Coast

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

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 (D.C. Cir. 1995).

⁷ 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.”).

Guard. A Coast Guard retiree's retired pay is based on his years of "active service,"⁸ which includes "active duty," and the definitions of "active duty" and "active service" for the purposes of the Uniformed Services under Title 10 of the United States do not include any service in the Merchant Marine.⁹ Moreover, in the statutes that made certain service in the Merchant Marine during World War II count as "active duty," Congress has always limited the purpose for which that service counts as active duty to eligibility for veterans' benefits under Title 38 of the United States Code.¹⁰ The Board will not contravene this statutory limitation at the applicant's behest to make his service in the Merchant Marine count as active duty for the purpose of his military retired pay. The Board notes that the applicant has already received a DD 214 to document his active duty in the Merchant Marine. This DD 214 is sufficient for purposes of receiving VA benefits, as evidenced by the December 12, 2016, VA letter provided by the applicant. Based on the record before it, the Board finds that the applicant's request 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)

⁸ 10 U.S.C. § 1405.

⁹ 10 U.S.C. § 101(d).

¹⁰ Public Law 95-202 stated that service in the Merchant Marine could only count as "active duty for the purposes of all laws administered by the Veterans' Administration," and Public Law 105-368 provided that qualifying service in the Merchant Marine between August 16, 1945, and December 31, 1946, would count as active duty for the purpose of veterans' burial and interment benefits.

ORDER

The application of retired [REDACTED], USCG, for correction of his military record is denied.

October 19, 2017

