

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-117

FINAL DECISION

This proceeding was conducted in accordance with the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. After receiving the applicant's completed application and military records, the Chair docketed the case on March 10, 2017, and assigned it 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 November 9, 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 as a [REDACTED] asked the Board to correct his second discharge form DD 214 to show the twenty years of active duty service that he performed from July 1980 through August 1, 2000. He indicated that he discovered the alleged error in his record on March 15, 2016, and that the Board should find it to be in the interest of justice to consider his application because he needs to buy back his twenty years of active military service towards his retirement from the [REDACTED].

SUMMARY OF THE RECORD

The applicant enlisted on July 7, 1980, at age 18, with no prior military service. His record contains two DD 214s. The first one shows that he enlisted in the Coast Guard on July 7, 1980, and was honorably discharged on June 6, 1990, and block 12c, "Net Active Service This Period," correctly shows that he had served exactly 9 years and 11 months on active duty.

The applicant immediately reenlisted on June 7, 1990, and his second and final DD 214 shows that he served another 10 years, 1 month, and 24 days on active duty before separating on July 31, 2000. He therefore entered retired status on August 1, 2000. This latter period of 10 years, 1 month, and 24 days of active duty is accurately shown in block 12c of his second DD 214 as "Net Active Service This Period." However, block 12d, "Total Prior Active Service," of this second DD 214 shows that he had 12 years and 11 months of prior active duty, instead of 9 years and 11 months. The narrative reason for separation on this DD 214 is "sufficient service for retirement."

APPLICABLE LAW AND REGULATIONS

COMDTINST M1900.4D contains the Commandant's instructions for the preparation and distribution of the DD 214. The DD 214 provides the member and the service with a concise records of a period of service with the Armed Forces at the time of the member's separation. Chapter 1.D.2.a. of the instruction provides that all entries are for the current period of active duty through the date of separation listed in block 12b on the form. Chapter 1.C. of the instruction states that Block 12d should contain the years, months, and days of service creditable for basic pay for all active service prior to the date of entry on active duty entered in block 12a. This computation will include all periods of active duty training performed in any branch of the Armed Forces.

VIEWS OF THE COAST GUARD

On August 4, 2017, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in accordance with a memorandum submitted by the Commander, Personnel Service Center (PSC).

The JAG argued that relief should be denied because the applicant was properly issued two separate DD 214s to reflect two separate enlistments. The JAG noted that although he served continuously on active duty with no break in service, he was discharged on June 6, 1990, and immediately reenlisted on June 7, 1990, creating two distinct periods of service. The JAG argued that Coast Guard regulations do not permit combining multiple periods of service into one DD 214 and since the applicant's second DD 214 captures his prior active service, there is no error that would entitle him to relief.

PSC argued that relief should be denied because the application is untimely, and with regards to the merits, noted that the applicant's second DD 214 properly shows that he had sufficient service for retirement. However, PSC recommended that the Coast Guard issue the applicant a DD 215 to correct an error in block 12d, "Total Prior Active Service," on his second DD 214 to show that he had 9 years and 11 months of prior active duty, instead of 12 years and 11 months. PSC noted that block 12d on his second DD 214 should match block 12c on his first DD 214.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 14, 2017, the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. The Chair 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 submission, 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 received and signed his second DD 214 on July 31, 2000, upon his

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

retirement from the Coast Guard, so the preponderance of the evidence shows that he knew of the alleged errors in his record in 2000, and his application is untimely.

2. 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 Although the applicant did not justify his delay, because the Coast Guard has identified a clear and substantial error on his final DD 214 that could prohibit him from “buying back” his service time, as he alleged, the Board will waive the statute of limitations in the interest of justice.

3. The applicant alleged that this final DD 214 is erroneous and unjust because it does not accurately reflect all of his active duty time and is preventing him from “buying back” his active service toward a federal civilian retirement. 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.⁵ 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.”⁶

4. The Board finds that the preponderance of the evidence shows that the applicant’s second DD 214 should be corrected as PSC recommended. PSC should issue a DD 215 to correct block 12d of the second DD 214 to show that the applicant had 9 years and 11 months of “Total Prior Active Service”—the amount of active service shown as net active service in block 12c on his first DD 214, which covered the period from July 7, 1980, to June 6, 1990. The fact that block 12d on his second DD 214 currently erroneously shows 12 years and 9 months of prior active service—three years more than he had actually served—is likely to cause problems, as the applicant alleged, because it is clearly incorrect.

5. Accordingly, the applicant’s request for correction of his DD 214 to accurately reflect his twenty years of active duty should be granted by directing the Coast Guard to issue a DD 215 correcting the Total Prior Active Service shown in block 12d of his second DD 214 to reflect 9 years and 11 months, instead of 12 years and 11 months.

(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).

⁶ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

ORDER

The application of [REDACTED] USCG (Retired), for correction of his military record is granted as follows: The Coast Guard shall issue him a DD 215 correcting block 12d of his DD 214 dated July 31, 2000, to show 9 years and 11 months of Total Prior Active Service.

November 9, 2017

