

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-146

████████████████████
SN (former)

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 applicant's completed application on April 17, 2017, and assigned it to ██████████ to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated December 1, 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 alleged that there is a discrepancy regarding the retirement date in her Coast Guard record and asked the Board to clarify if she was retired on June 27, 1997, or honorably discharged on April 29, 1999. If she was in fact honorably discharged in 1999 then she asked the Board to create a new DD 214 reflecting this because her current DD 214 shows that she was temporarily retired on June 27, 1997. The applicant stated that she would like to clarify her retirement/discharge date because she is a federal employee and it is important that it be correct because it affects her earned leave and seniority within her agency.

In support of her application, the applicant submitted a copy of her DD 214 which shows that she was retired from the Coast Guard on June 27, 1997, due to a temporary disability. She also submitted a copy of an undated letter from the Coast Guard Human Resources Service and Information Center stating that she had been notified in a letter dated April 29, 1999, that she was being removed from the Temporary Disabled Retired List (TDRL) and discharged from the Coast Guard with severance pay as of that date. This letter advised her of how her separation pay had been calculated and stated that her net severance pay had been sent to her credit union.

The applicant stated that she discovered the alleged discrepancy in her records on January 30, 2017.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on September 26, 1995. On March 13, 1997, she was recommended for placement on the TDRL based on the findings of a Coast Guard Central Physical Evaluation Board (CPEB). She acknowledged the findings and recommendations of the CPEB and waived the right to a formal hearing on April 28, 1997.

In a letter dated May 13, 1997, the applicant was notified by the Personnel Command that the findings of the CPEB had been approved and that she would be placed on the TDRL effective June 27, 1997. She received a DD 214 which shows that she was retired on June 27, 1997, due to a temporary disability, pursuant to Article 12-C-10 of the Personnel Manual, COMDTINST M1000.6A. The DD 214 also shows that her character of service was honorable and that her reentry code was RE-2 (retired).

After further medical treatment, on March 15, 1999, a CPEB re-evaluated her disability and recommended that she be discharged with a 10% disability rating and severance pay. On April 29, 1999, the Coast Guard Personnel Command sent her a letter notifying her that she had been removed from the TDRL and had been separated with severance pay.

APPLICABLE REGULATIONS

Article 1.B.3. of COMDTINST M1900.4D, the instructions for preparing the DD Form 214, states that a DD 214 will NOT be issued to members who are being removed from the TDRL.

Article 1.D.5.c. of the Personnel Manual in effect in 1997 states that when computing time in service, time served on the TDRL may not be included in the computation.

Article 8.H.4 of COMDTINST M1850.2C, Physical Disability Evaluation System manual in effect in 1997, provides that temporary retirement status implies no inherent right for retention on the TDRL for the entire five-year period provided by 10 U.S.C. § 121. Upon review of a periodic physical examination and a determination that the member's condition is of a permanent nature and stable, a CPEB may recommend removal of the member's name from the TDRL by discharging the member with severance pay if the member's disability rating is less than 30%, by permanently retiring the member with a disability rating of 30% or greater, or by finding the member fit for duty, as appropriate.

VIEWS OF THE COAST GUARD

On September 19, 2017, the Judge Advocate General 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). PSC argued that the application is untimely and should be denied on those grounds. Regarding the merits, PSC stated the applicant received a DD 214 when she was placed on the TDRL and was not entitled to a second DD 214 upon final discharge.

PSC argued the applicant is not entitled to a second DD 214 because she received a DD 214 when she was placed on the TDRL and is not eligible to receive another one upon her removal from the TDRL. PSC stated that according to Article 1.B.3 of the DD 214 Instructions, members who are removed from the TDRL are ineligible to receive a DD 214. Therefore, PSC argued, the applicant was ineligible to receive a DD 214 after she was permanently separated on April 29, 1999. PSC noted that the total active service in Block 12.c of her DD 214 is correct, and that because she was not on active duty from the time of her placement on TDRL until her final separation, she did not accrue additional active duty service that would warrant the preparation of another DD 214.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 25, 2017, the Chair sent the applicant a copy of the views of the Coast Guard and invited her to respond. No response was received.

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 her DD 214 on June 27, 1997, when she was placed on the TDRL, and was notified of her discharge on April 29, 1999. The preponderance of the evidence shows, therefore, that she knew of the alleged discrepancy in her record no later than 1999. Therefore, her 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

3. The applicant stated that she discovered the alleged discrepancy in her record on January 30, 2017, but the record shows that she was informed of her temporary retirement in 1997 and of her discharge with severance pay in 1999. And she did not provide a compelling reason for her delay in applying to the Board.

4. A cursory review of the applicant's record indicates that there is insufficient evidence to support her argument that there is a discrepancy in her record that needs to be corrected. The record shows that the applicant was placed on the TDRL on June 27, 1997, and received a

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

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).

DD 214 which shows that she was separated on that date due to a temporary disability. The record also shows that she was notified by PSC in a letter dated April 29, 1999, that she had been removed from the TDRL and separated from the Coast Guard that date. The applicant did not receive a second DD 214 reflecting her removal from the TDRL because Article 1.B.3. of COMDTINST M1900.4D states that a DD 214 will not be issued to members who are being removed from the TDRL. Under Article 1.D.5.c. of the Personnel Manual, when computing time in service, time served on the TDRL may not be included in the computation. The applicant was not on active duty during the time from her placement on the TDRL to her final separation, and did not accrue additional active duty service. When a member is on the TDRL, she has been separated from the Coast Guard and placed in a retired status. The applicant was not performing any active or inactive duty while on the TDRL. Therefore, the Boards finds that the applicant's time on the TDRL should not be added to her active duty time. As a result, Block 12.c. of her final DD 214, Net Active Service This Period, is correct and should not be changed. The Board notes that the continuing presence of the word "retired" on her DD 214 is effectively corrected by the letter issued to her on April 29, 1999.

5. Based on the record before it, the Board finds that the applicant's claim cannot prevail on the merits. Accordingly, the Board will not excuse the application's untimeliness or waive the statute of limitations and the applicant's request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former [REDACTED] USCG, for correction of her military record is denied.

December 1, 2017

