

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-018

████████████████████
SA (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. After receiving the application and confirming that neither the Coast Guard nor the National Archives has an official personnel data record (PDR) for the applicant, the Chair docketed the case on November 2, 2017, and assigned the case to staff member ██████████ to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 14, 2018, 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 complained to the Board that his Coast Guard record has been lost and asked the Board to restore his service record and create a DD 214¹ showing that his rank at discharge was E-3 (seaman), instead of E-2 (seaman apprentice). He also asked the Board to upgrade his narrative reason for separation and his RE-4 reenlistment code. He alleged that the DD 214 that he received upon discharge was issued in a "deceitful manner" because the copy he signed was the short form and did not include the narrative reason for separation or the reenlistment code, so he was not aware that that the DD 214 contained any derogatory information. The applicant stated that he is currently homeless and needs a DD 214 to obtain housing.

The applicant stated that he was taken to mast/non-judicial punishment (NJP) for going to a doctor without permission but alleged that his supervisor had given him permission and that the investigating officer was biased because he had previously accused him (the applicant) of disrespect. He also alleged that he was never advised of his rights before being punished at mast, did not waive his rights, was not afforded the opportunity to consult with an attorney, and received cruel and unusual punishment because he is African American. The applicant stated that after

¹ After receiving the applicant's original application the Chair searched for the applicant's military record in order to docket the case, as required by 33 C.F.R. § 52.21(c)(2). Neither NPRC nor the Coast Guard could find the applicant's military record and the Coast Guard admitted that it has been lost.

being taken to mast, he was sent away for temporary sea duty so that he could not appeal the NJP and then he was discharged shortly after returning from sea duty.

The applicant stated that he discovered the errors on his DD 214 on December 9, 1985, and argued that the Board should find it in the interest of justice to consider his application because he attempted to address the alleged mistreatment by the Coast Guard in 1995 and that later filed a civil action in Federal Court.²

SUMMARY OF THE RECORD

After the applicant submitted an application to the Board on March 19, 2014, the BCMR staff was unable to obtain his Coast Guard personnel data record (PDR) and ultimately concluded that it had been lost.³ Although the database of the National Personnel Records Center (NPRC) showed that it had received his PDR from the Coast Guard after he was discharged, NPRC had sent his PDR to the Coast Guard in 1995 (presumably pursuant to his litigation) and it was never returned. The Coast Guard was likewise unable to locate his PDR, but on November 1, 2017, provided the Board with print-outs from Coast Guard's Joint Uniform Military Pay System (JUMPS) Data Repository, which is a historical pay database that is no longer in use.

According to the print-outs from the JUMPS Data Repository, the applicant enlisted in the Coast Guard on November 10, 1981, and was discharged on February 15, 1985. The print-outs also show that on November 9, 1984, he received non-judicial punishment (NJP) and his punishment included 7 days of extra duty and reduction in pay grade from E-3 to E-2. The print-outs do not show his characterization of service (honorable, etc.) but do show that he was separated with a JHJ separation code, which denotes an involuntary discharge due to unsatisfactory performance, and an RE-4 reenlistment code, which means that he is ineligible to reenlist.

APPLICABLE REGULATIONS

COMDTINST M1900.4D contains the Commandant's instructions for the preparation and distribution of the DD 214. 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

² The BCMR has no record of processing a previous application from the applicant.

³ On April 11, 2014, the Chair notified the applicant that the Board was unable to docket his case because the NPRC did not have his PDR as it had been checked out by another government office. The Chair continued to order his PDR over the next two years but the orders were cancelled because his PDR record had been "charged out." On September 13, 2017, the applicant submitted a second DD 149 to the Board asking that it provide him with a copy of his DD 214 and stating that NPRC told him that they did not have his records and that the Coast Guard had jurisdiction over the matter. In support of his application he submitted two letters. In the first letter dated, May 8, 2017, the Personnel Service Center advised the applicant that his records had been checked out by Coast Guard Headquarters in 1995 and that he would need to grant NPRC permission to add any documents to his record. The second letter is from NPRC to the applicant dated August 19, 2017, and states that NPRC is the physical custodian of the military records of former members of the U.S. Armed Forces but that the Commandant, U.S. Coast Guard, retains legal custody of military records. On October 24, 2017, the Chair sent a request to the Coast Guard's Personnel and Pay Center for copies of any historical pay records that they could find to show that the applicant had served on active duty. The Coast Guard replied on November 1, 2017, and submitted print-outs from the JUMPS Data Repository. After reviewing the print-outs, the Chair concluded that they contained sufficient information about the applicant's military service to warrant docketing the case.

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 3 of COMDTINST M1080.10I, the Military Personnel Data Records (PDR) System Manual issued on May 2011 contains the current rules for disposition of members' PDRs.

VIEWS OF THE COAST GUARD

On April 19, 2018, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant partial relief in accordance with a memorandum submitted by the Commander, Personnel Service Center (PSC).

PSC argued that although the application is untimely, partial relief should be granted by creating a DD 214 because the JUMPS Data Repository clearly shows that the applicant served on active duty in the Coast Guard and that he should have a DD 214 on file. PSC argued, however, that the applicant's request to have his rank, reenlistment code, and narrative reason for separation changed should be denied because the repository shows that he received non-judicial punishment (NJP) and was reduced in rank to E-2 before his discharge.

PSC noted that according to their records, the applicant's PDR was checked out in 1995 and was never returned, so it is unable to validate or search for any information regarding his separation or his DD 214.

PSC argued that if partial relief is granted and the Board orders the Coast Guard to create a DD 214 for the applicant, then the DD 214 should be based on the information provided within the JUMPS Data Repository and so his SPD code should remain JHJ, his reenlistment code should remain RE-4 reenlistment code, and his paygrade should remain E-2. However, PSC argued that this relief should only be granted if the applicant can provide verification from the Department of Veterans Affairs (DVA) regarding the characterization of his service. PSC stated that it contacted the DVA and confirmed that the applicant received an honorable discharge from the Coast Guard, but that the DVA refused to provide PSC with any official documentation.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 30, 2018, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. After the applicant submitted a new mailing address, the BCMR resent him the views of the Coast Guard, and he responded on July 10, 2018. The applicant expressed "dissatisfaction" with the Coast Guard's recommendation. In his response, he restated many of the same arguments that he made in his previous applications to the Board and also stressed that the Coast Guard failed to abide by its own regulations when it discharged him and that he did not receive any due process. He also alleged that he never received travel pay upon discharge nor was he given any unemployment compensation. The applicant also submitted a copy of a letter from the Regional Office of the Department of Veterans Affairs in Boston, Massachusetts, dated December 23, 2013, which states that he received an honorable discharge from the Coast Guard on February 15, 1985.

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 over this matter pursuant to 10 U.S.C. § 1552.
2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.⁴
3. The applicant's request to have his rank, reenlistment code, and narrative reason for separation on his DD 214 corrected is untimely under 10 U.S.C. § 1552(b) because he received his DD 214 in 1985 but he did not file his application within three years of his discharge. He alleged that he was unaware of his separation code, reenlistment code, and narrative reason for discharge in 1985 because he received only the short-form copy of his DD 214. However, under COMDTINST M1900.4D, the manual for preparing DD 214s, members being discharged are required to sign both the short-form copy of the DD 214 (without that information) and the long-form copy (with the information). The manual states, "The member being separated shall sign each copy separately in ink to ensure that they are aware of the differences of the information contained on certain copies of the DD Form 214." Members are then provided a short-form copy and are advised that they may also have a long-form copy if they request one. Therefore, the applicant presumptively signed and knew the content of the long-form copy of his DD 214 upon his discharge in 1985, 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.⁵ 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 "analyze [in] both the reasons for the delay and the potential merits of the claim based on a cursory review"⁶ 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."⁷ The applicant provided no reason or justification for his delay in requesting changes to his DD 214, but it is very important for every veteran to have an official military record and DD 214. Therefore, the Board will consider the merits of his request and address the applicant's complaint regarding his lost a PDR.
5. The applicant asked the Board to provide him with a DD 214 reflecting his active duty service and to correct his rank, reenlistment code, and narrative reason for separation. He alleged that those entries on his DD 214 are erroneous and unjust and also complained that his PDR has been lost since the Coast Guard retrieved it from the NPRC in 1995. In considering

⁴ *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

⁵ 10 U.S.C. § 1552(b).

⁶ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁷ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396, 1405 n.14, 1407 n.19 (D.C. Cir. 1995).

allegations of error and injustice, the Board begins its analysis in every case 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. 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." *Arenas v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

6. The Coast Guard's records show that the applicant was reduced in rate at mast from E-3 to E-2 in November 1984, a few months before his discharge. He alleged that he was not afforded due process in the conduct of his mast, but he submitted no evidence to support his allegation, and members are not afforded the same rights at mast that they receive in a criminal proceeding. For example, members are not entitled to representation by an attorney at mast,⁸ and members assigned to a cutter are not entitled to refuse punishment at mast and demand trial by court-martial.⁹ Although members are not required to incriminate themselves at mast, the rule that would preclude unwarned statements from consideration in a court does not necessarily apply at mast,¹⁰ and procedural violations generally do not invalidate punishment imposed at mast.¹¹ Therefore and given the presumption of regularity accorded his command in the conduct of the mast,¹² the Board finds no grounds for removing the NJP from the applicant's record or reversing the punishment by upgrading his paygrade.

7. Because there are no grounds for removing the NJP from the applicant's record and his separation code, narrative reason for separation, and reenlistment code are presumptively correct,¹³ the Board finds that the applicant has not proven by a preponderance of the evidence that his narrative reason for separation, separation code, or reenlistment code are erroneous or unjust. The Coast Guard's JUMPS Data Repository shows that he received a JHJ separation code, and the corresponding narrative reason for separation in the Separation Program Designator Handbook is "Unsatisfactory Performance." The handbook also authorizes the RE-4 reenlistment code for members being discharged for unsatisfactory performance under Article 12-B-9 of the Personnel Manual then in effect. The applicant has not submitted any evidence to rebut the presumption of regularity accorded these records.

8. Because the applicant submitted a copy of a letter from the DVA which states that he received an Honorable discharge and his dates of service and other significant entries are available in the JUMPS Data Repository, the Board finds that the Coast Guard should be directed to create a DD 214 for the applicant. The DD 214 should be prepared as completely as possible and should show at a minimum the following information:

⁸ MANUAL FOR COURTS-MARTIAL UNITED STATES (2012), p. V-3.

⁹ *Id.* at V-2.

¹⁰ *Id.* at V-4.

¹¹ *Id.* at V-2.

¹² 33 C.F.R. § 52.24(b).

¹³ *Id.*

- The applicant began active duty on November 10, 1981, and was discharged on February 15, 1985;
- His rank and paygrade upon discharge were SA and E-2, respectively;
- He received an Honorable characterization of service/discharge;
- He was discharged under the authority of Article 12-B-9 of COMDTINST M1000.6 (the Personnel Manual then in effect);
- His separation code is JHJ;
- His reenlistment code is RE-4; and
- His narrative reason for separation is “Unsatisfactory Performance.”

7. In his response to the Coast Guard’s advisory opinion, the applicant stated that he never received travel pay upon his discharge or any unemployment compensation. He did not submit sufficient evidence to overcome the presumption that the Coast Guard paid him everything he was due, however. He was not entitled to separation pay because he had less than six years of service,¹⁴ and the Coast Guard does not pay unemployment compensation.

8. The applicant has proven by a preponderance of the evidence that the Coast Guard lost track of his PDR many years ago even though it retains pay records in its database proving his years of service. Therefore, the Board finds that in the interest of justice, the Coast Guard should establish a PDR for the applicant with, at a minimum, copies of all available data from the JUMPS Data Repository, his new DD 214, and a copy of this BCMR decision. Furthermore, the Coast Guard should follow the distribution and disposition guidelines for the DD 214s and PDRs of discharged members in COMDTINST M1080.10I and any other applicable policy.

9. Therefore, partial relief should be granted in accordance with findings 6 and 8, above. No other relief is warranted.

(ORDER AND SIGNATURES ON NEXT PAGE)

¹⁴ COMDTINST 1910.1.

ORDER

The application of former SA [REDACTED], USCG, for correction of his military record is granted in part as follows:

1. The Coast Guard shall issue him a DD 214 which shall be prepared as completely and accurately as possible and shall include at a minimum the following information:

- He entered active duty on November 10, 1981, and was discharged from active duty on February 15, 1985;
- His rank and paygrade upon discharge were SA and E-2, respectively;
- He received an Honorable characterization of service/discharge;
- He was discharged under the authority of Article 12-B-9 of COMDTINST M1000.6, the Personnel Manual then in effect;
- His separation code is JHJ;
- His reenlistment code is RE-4; and
- His narrative reason for separation is “Unsatisfactory Performance.”

2. The Coast Guard shall establish a personnel data record (PDR) for him containing at a minimum all available records from the JUMPS Data Repository, his new DD 214, and a copy of this BCMR decision. Furthermore, the Coast Guard shall follow the distribution and disposition guidelines for DD 214s and PDRs of discharged members in COMDTINST M1080.10I and other applicable policies.

3. No other relief is granted.

September 14, 2018

