

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-100

████████████████████
FA (Former)

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 on February 16, 2018, after receiving the applicant's completed application, and assigned it to staff member ██████████ to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated December 21, 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 asked the Board to correct the date of birth on his DD 214¹ from ██████████ ██████████. He also asked the Board to correct his date of enlistment from July 7, 1975, to January 1975. The applicant alleged that the clerk who prepared his DD 214 at the time of his discharge made the mistake in typing his birth date because he was overwhelmed. He also stated that his date of enlistment on his DD 214 is incorrect because he signed his enlistment contract in January 1975 and not on July 7, 1975, as indicated on his DD 214. The applicant stated that he discovered the alleged errors in his record on January 3, 2018, and argued that the Board should find it in the interest of justice to consider his application because the VA denied his application for a home loan because of the error on his DD 214 and so he needs the corrections made so he can obtain a VA home loan.

In support of his request, the applicant submitted a copy of a DD 214 documenting almost a year of active duty from July 7, 1975, through June 29, 1976; a DD 215 showing that his DD 214 was corrected to show that the authority for his discharge was Article 12-B-7 of the Personnel Manual; and a copy of a Coast Guard Recruiting Office recruit ID card which states that the applicant's date of birth is ██████████.

¹ A DD 214 is prepared to document a member's release or discharge from a period of active duty and a DD 215 is used to correct or add information to a DD 214.

SUMMARY OF THE RECORD

The applicant's military record includes the following documentation:

- A Consent, Declaration of Parent of Legal Guardian form that the applicant's father completed on December 17, 1974, so that the applicant could enlist in the Coast Guard at the age of 17. The applicant's date of birth is listed as [REDACTED]. Numerous other documents in his record also show that his date of birth is [REDACTED].
- An Enlistment Contract dated February 3, 1975, states that the applicant enlisted in the Coast Guard Reserve for six years. His date of birth is listed as [REDACTED]. The applicant also signed a Statement of Understanding in which he agreed to perform four years of active duty during those six years.
- An Administrative Remarks page states that the applicant enlisted in the Reserve under the Delayed Entry Program (DEP) on February 3, 1975, and was discharged from the Reserve on July 6, 1975, to enlist on active duty in the regular Coast Guard.
- A second Enlistment Contract shows that the applicant enlisted on active duty in the regular Coast Guard on July 7, 1975. Block 12 shows that his date of birth is [REDACTED].
- A DD 214 shows that the applicant enlisted in the Coast Guard on July 7, 1975, at the age of 17 and was honorably discharged on June 29, 1976, having served on active duty for 11 months and 23 days. Block 4 states that his date of birth is [REDACTED]. Block 9.c., which should show the authority and reason for discharge, is blank. Block 27 states that the reason for his discharge is "Unsuitability."
- A DD 215 issued on July 14, 1976, shows that the applicant's date of birth on his DD 214 was corrected to [REDACTED].
- A DD 215 issued on July 12, 1978, shows that the reason for discharge in block 27 of his DD 214 was corrected to "Hardship."
- Another DD 215 dated July 12, 1978, shows that the block 27 was further amended to include Article 12-B-7 of the Personnel Manual as the authority for discharge due to hardship; separation code MDB, denoting a hardship discharge; and reentry code RE-4.

VIEWS OF THE COAST GUARD

On August 6, 2018, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion and adopted the findings and analysis in a memorandum submitted by the Commander, Personnel Service Center (PSC). PSC recommended granting partial relief, noting that the applicant's date of birth listed on his DD 214 is incorrect and should be changed. (PSC apparently did not notice the DD 215 dated July 14, 1976.) PSC also stated that the date of enlistment on the applicant's DD 214 is correct and should not be changed. PSC argued that the applicant's request to have the information on his DD 215 incorporated into a new DD 214 should be denied because the DD 215 is a correction to the DD 214 and acts as an addendum.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 21, 2018, the BCMR sent the applicant a copy of the Coast Guard's recommendation, including copies of his DD 214 and the DD 215, and invited him to submit a response. He responded on September 10, 2018, and stated that he still needs his birth date corrected on his DD 214.

APPLICABLE LAW AND REGULATIONS

COMDTINST 1900.4A, was issued in 1975 and contains the Commandant's instructions for completing the DD 214. It states that Block 4 (Date of Birth) should contain the member's date of birth, entered as the year, month, and day.

The DD 214 instruction also states that Block 15 (Date Entered Active Duty This Period) should contain the date of the member's entry on the current period of active duty or active duty for training.

The DD 214 instruction states that a correction to a DD 214 shall be made on a DD 215. It does not address how many DD 215s may be issued. Subsequent editions of the manual stated, however, that a DD 214 must be reissued when two DD 215s have already been issued and another correction is required. In addition, they state that a DD 214 should be reissued when the reason for discharge has been upgraded.

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.² The applicant was discharged from the Coast Guard and received and signed his DD 214 on June 29, 1976, and presumably knew its contents at the time. Therefore, 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.³ 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"⁴ 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."⁵

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

³ 10 U.S.C. § 1552(b).

⁴ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁵ *Id.* at 164, 165; see also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

3. The applicant did not explain why he waited so long to seek these corrections and the Board finds that nothing prevented him from seeking correction of the alleged errors or injustices more promptly. However, because his discharge form—which is normally a single page—currently consists of one DD 214 and three half-sheet DD 215s, which is impermissible under current rules, the Board finds that it is in the interest of justice to waive the statute of limitations in this case.

4. The applicant alleged that his DD 214 does not reflect his accurate date of birth or date of enlistment. 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.⁶ 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.”⁷

5. The Board agrees that the preponderance of the evidence shows that the applicant's date of birth on his DD 214 is wrong, but his record shows that his date of birth was already corrected to [REDACTED], on a DD 215 dated July 14, 1976.

6. The applicant alleged that the enlistment date on his DD 214 is incorrect because he enlisted in January of 1975 and not July as stated on the DD 214. The record shows, however, that the applicant enlisted in the Coast Guard Reserve as an inactive reservist under the Delayed Entry Program (DEP) on February 3, 1975. His time in the Reserve under the DEP is not creditable as active duty because during this time he was simply waiting to begin his recruit training and active service. The record shows that he was discharged from the DEP on July 6, 1975, for immediate reenlistment on active duty, and he started his active duty duty on July 7, 1975. The Board finds that the applicant's DD 214 correctly shows his enlistment date of July 7, 1975, because that is the day on which he began active duty, and the Coast Guard's instructions for preparing the DD 214 states that Block 15 (Date Entered Active Duty This Period) of the DD 214 should contain the date of the member's entry on the current period of active duty.

7. The applicant also asked the Board to create a new DD 214 containing the separation authority that was corrected by the DD 215 on July 12, 1978. The DD 215 form is an addendum to the DD 214 used when a correction is required. The DD 214 manual in effect in 1976 did not address how many DD 215s could be issued before the DD 214 should be reissued, but subsequent editions specified that only two DD 215s may be issued and that if a third is required, the DD 214 must be reissued. Although the information on the applicant's DD 214, as corrected by the three existing DD 215s, is accurate, the fact that his DD 214 is corrected by three separated DD 215s is by itself erroneous and unjust.

⁶ 33 C.F.R. § 52.24(b).

⁷ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

8. Accordingly, the Board finds that partial relief should be granted. The Coast Guard should be directed to issue the applicant a new DD 214 incorporating the information on the three DD 215s. His request to change the date of enlistment on his DD 214 should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former FA [REDACTED], USCG, for correction of his military record is granted in part. The Coast Guard shall issue him a new DD 214 incorporating the corrections currently made on the three DD 215s in his record: The first issued on July 14, 1976, to correct his date of birth to [REDACTED] the second issued on July 12, 1978, to correct his reason for discharge to "Hardship"; and the third also issued on July 12, 1978, to correct the authority for discharge, separation code, and reentry code. All other requests are denied.

December 21, 2018

