

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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2018-103**

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**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 22, 2018, and assigned it to staff attorney ██████████ to prepare the decision for the Board pursuant to 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, a former Seaman who was discharged on June 1, 1977, asked the Board to correct his record to show that he entered active duty sometime between February and April of 1975 instead of August 4, 1975. He explained that the actual date he “signed induction papers” was uncertain, but he merely reported for duty on August 4, 1975. Therefore, August 4, 1975, was not the correct date that he entered active duty. He argued that his discharge form DD 214 should reflect the “date of induction.” Regarding the timing of his application, the applicant stated that he discovered the alleged error on December 8, 2017, and stated that it was in the interest of justice to correct his record because the “variance in dates [affects his] Vietnam era status.”

**SUMMARY OF THE RECORD**

The applicant's Enlistment Contract shows that he enlisted in the Coast Guard on August 4, 1975. All of his enlistment paperwork is dated August 4, 1975, and bears the applicant's signature with this date.

The applicant's discharge form, DD 214, which he signed, states that he was honorably discharged on June 1, 1977, and that he had entered active duty on August 4, 1975.

The applicant's military record contains a request for military records from the applicant dated January 30, 1994. The applicant filled out the form by hand and wrote the date he entered active service as August 4, 1975.

### **VIEWS OF THE COAST GUARD**

On August 6, 2018, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case. In doing so, he adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC stated that the application is not timely and therefore should not be considered on the merits. PSC stated that the applicant's record shows that he enlisted on August 4, 1975. PSC stated that his record was reviewed and no paperwork for the Delayed Entry Program was found. Therefore, PSC argued, the applicant has not shown that an error or injustice exists in his record. PSC recommended that the Board deny relief.

### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On September 7, 2018, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. The applicant responded on September 14, 2018. He stated that the paperwork made it appear as though he "showed up on August 4, 1975, at the recruiting office, signed some papers, and immediately got shipped off to boot camp." He asserted that this was not what occurred. He claimed that he was instructed to report for duty on August 4, 1975, after he had spoken to a recruiter in the spring of that year. He acknowledged that he was unsure of the exact date, but he believed it was sometime in April. The applicant also asserted that he was told that he was participating in the Delayed Entry Program, which is why he was told to report on August 4, 1975. He stated that he did "not contest the findings of the Coast Guard" but he did contest the "supposition" that enlistment and active duty begin on the same day.

### **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.<sup>1</sup> The applicant was discharged and signed his DD 214 showing the dates he started and was discharged from active duty in 1977. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in 1977, and his application is untimely.

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

3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.<sup>2</sup> 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”<sup>3</sup> 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.”<sup>4</sup>

4. Regarding the delay of his application, the applicant explained that the “variance” was affecting his Vietnam era status. 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 this case indicates that the applicant cannot prevail on the merits. The record contains evidence that supports the current DD 214’s entry date of August 4, 1975, which is presumptively correct,<sup>5</sup> and there are no records showing that he began serving on active duty earlier than August 4, 1975. There is even a form filled out by the applicant from 1994 on which he wrote that he had entered active duty on August 4, 1975. It is certainly likely that the applicant spoke with a recruiter and completed paperwork to apply to enlist in the spring of 1975, but speaking with a recruiter and applying to enlist does not qualify as entering active duty. There is also no evidence that the applicant participated in the Delayed Entry Program by enlisting in the Reserve before August 4, 1975, but even if he had done so, August 4, 1975, would still be the correct date of entry on active duty. DD 214s document periods of active duty and so the date of entry is the date the member began serving on active duty. Based on the record before it, the Board finds that the applicant’s claim 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)**

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<sup>2</sup> 10 U.S.C. § 1552(b).

<sup>3</sup> *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

<sup>4</sup> *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

<sup>5</sup> 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.”).

**ORDER**

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

December 21, 2018

