

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-230

████████████████████
BM3 (Former)

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case on September 19, 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 6, 2019, 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 boatswain's mate third class (BM3/E-4), asked the Board to correct the separation date on his DD 214 from August 19, 1986, to July 7, 1987. In support of his request, he submitted a copy of his DD 214, which shows that he began active duty on August 20, 1982, and was released from active duty (RELAD) on August 19, 1986. He also submitted a copy of a document titled "HQ ETO No. 22/23-86," dated March 6, 1986, which lists ten Coast Guard members who were approved for a tour extension with various rotation dates. It shows that the applicant's tour extension was requested on December 10, 1985, and that his rotation date was July 7, 1987.

The applicant stated that he discovered the alleged error in his record on January 17, 2017, and did not explain why he did not discover the alleged error earlier.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard Reserve on October 15, 1981, and incurred a six-year military service obligation. On August 20, 1982, he was discharged from the Reserve and enlisted on active duty in the regular Coast Guard for a term of four years. His military service termination date remained October 14, 1987. The applicant served aboard two cutters during his enlistment and advanced to BM3.

The applicant's DD 214, which he signed, shows that he was released from active duty (RELAD) into the Reserve to complete his military service obligation on August 19, 1986, exactly four years after he enlisted on active duty. It shows that his net active duty during his enlistment was four years; that he had served 6 months, 26 days of active duty before the date he enlisted in the regular Coast Guard; and that he had served 3 months, 9 days of inactive service as a reservist before he enlisted in the regular Coast Guard.

The applicant's record contains numerous documents indicating that he was RELAD on August 19, 1986. These documents include a list of his duty assignments which shows that he was assigned to the Coast Guard Cutter Hudson when he was RELAD on August 19, 1986; an Administrative Remarks form (CG-3307) which states that the applicant was RELAD at the end of his enlistment on August 19, 1986, and that he was transferred to the Coast Guard Reserve to complete his six years of obligated service; a list of his marks which indicates that the last set of marks he received was dated August 19, 1986; and Separation Orders which show that he was RELAD on August 19, 1986. His record also contains a Personnel Action sheet indicating that he was honorably discharged from the Reserve on October 14, 1987, at the end of his military service obligation. The HQ ETO form submitted by the applicant with his application is not in his official military record.

VIEWS OF THE COAST GUARD

On April 2, 2019, 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 noted that the application is untimely and argued that relief should be denied because the applicant's record is correct because his DD 214 and his two Endorsements on Orders all indicate that he was discharged from active duty on August 19, 1986, and assigned to the Coast Guard Reserve to fulfill his remaining obligated service time. PSC added that it had reviewed the applicant's records and did not find anything dated July 7, 1987, for "service information or DD 214 purposes."

In addition to adopting the facts and analysis provided by the PSC, the JAG argued that the record does not support a conclusion that the applicant's DD 214 is incorrect because his record is rife with documents which prove that he was RELAD on August 19, 1986. The JAG also noted that the document provided by the applicant to prove that he was discharged July 7, 1987, is not in his official military record. Moreover, the JAG noted, that document was created on March 6, 1986, and his DD 214 is dated August 19, 1986, which supersedes the document provided by the applicant.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 15, 2019, the BCMR sent the applicant a copy of the Coast Guard's recommendation and invited him to submit a response. The BCMR did not receive a response.

APPLICABLE LAW AND REGULATIONS

COMDTINST 1900.4B, was issued in 1979 and contains the Commandant's instructions for completing the DD 214. It states that Block 12.b. (Separation Date This Period) should contain the date the release, discharge, or change of status is effective.

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 must be filed within three years of the date that the applicant discovers the alleged error or injustice.¹ The preponderance of the evidence shows that the applicant was RELAD on August 19, 1986, and received and signed his DD 214 on that date. He completed his military service obligation on October 14, 1987, but did not submit his application to the Board until February 2, 2017, more than 30 years after he was discharged. Therefore, the preponderance of the evidence shows that the application was not timely filed.

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 In accordance with this direction, the Board has conducted a cursory review of the merits and finds no reason to excuse the untimeliness of the application:

a. The applicant did not explain or justify why he waited more than thirty years after his discharge to request correction of his RELAD date on his DD 214. He failed to show that anything prevented him from seeking correction of the alleged error or injustice more promptly.

b. The applicant has submitted no evidence of error or injustice. His DD 214 is correct because it indicates in Block 12.b. that he was RELAD on August 19, 1986, and there are numerous documents in his official military record which corroborate that his active duty service ended on that date. There are no documents which indicate that he was discharged on July 7, 1987, as he alleges. Moreover, the HQ ETO form that the applicant submitted indicates that he was approved for a tour extension, but it does not prove that he remained on active duty to complete that tour. If he had completed the tour

¹ 10 U.S.C. § 1552(b).

² *Id.*; 33 C.F.R. 52.22.

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).

extension and served on active duty until July 1987 then the discharge documents in his record and his DD 214 would reflect that, but they do not.

3. Accordingly, the Board will not excuse the application's untimeliness or waive the statute of limitations and his request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former BM3 [REDACTED], USCG, for correction of his military record denied.

December 6, 2019

