


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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-037

 EM2 (former)

FINAL DECISION

This is a proceeding under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2707. The Chair docketed the case after receiving the completed application on December 1, 2018, and this decision of the Board was prepared pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated January 31, 2020, 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, who was released from active duty into the Reserve on March 1, 2008, upon completing a four-year enlistment, asked the Board to correct his discharge form DD 214 to show that he was “deployed to SW Asia or any other country ... during combat war during [his] tenure on [a cutter].” He stated that he wants his DD 214 to show service in the combat zone because he has “a service connected disability with documents from UAE [United Arab Emirates] medical facility from missions conducted in Oman and Yemen and all of the middle east in the Persian Gulf.”

The applicant stated that he did not request this change earlier because he was unaware of the need. He stated that someone at the Department of Veterans' Affairs (VA) told him that the information “needed to be inputted on [his] DD 214 so [he] could receive treatment easier” for his service-connected disability.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on March 2, 2004; underwent training; and was then assigned to a cutter from December 2, 2004, to July 9, 2007. The cutter was homeported in the continental United States and was deployed for six months from September 2006 to March 2007. During this deployment, the applicant and other crewmembers received Imminent Danger Pay for serving in the combat zone in and around the Persian Gulf for two and one-half months from November 1, 2006, to January 13, 2007.

In July 2007, the applicant was transferred to a shore unit, where he served until his enlistment ended on March 1, 2008, and he was discharged. His DD 214 shows that he received an honorable discharge for “completion of required active service” with an RE-1 reentry code, making him eligible to reenlist. His DD 214 also shows that he performed no “foreign service” (block 12.f.); performed 2 years, 2 months, and 19 days of “sea service” (block 12.g.); and was awarded the Global War on Terror Expeditionary Medal and a Coast Guard Unit Commendation Ribbon for the deployment (block 13), as well as many other medals and awards.

VIEWS OF THE COAST GUARD

On April 9, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the Board deny relief in this case and adopted the findings, analysis, and recommendation provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC stated that DD 214s are prepared in accordance with instructions and that the Coast Guard’s DD 214 Instruction, PSCINST 1900.1B, is based on the Department of Defense DD 214 Instruction, DODI 1336.01. PSC stated that to be credited with “foreign service” in block 12.f. of a DD 214 the member must have been assigned to an overseas unit—either a shore unit or a cutter homeported overseas—on either a permanent or temporary basis. PSC stated that an overseas patrol by a cutter homeported in the continental United States does not count as “foreign service” for the purpose of block 12.f. Therefore, PSC recommended that the Board deny the applicant’s request.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 19, 2019, the applicant responded to the views of the Coast Guard. He stated that he was severely injured when he was deployed overseas and underwent numerous surgeries in 2007. He stated that these injuries led to him having a total hip replacement when he was just 34 years old. He stated that he understands that the Coast Guard’s recommendation is based on its DD 214 Instruction, which is in turn based on the Department of Defense’s instruction. However, he stated, he lived aboard that cutter as his home and life for a long deployment and is sad to learn that his service is not considered the same as being sent overseas to a shore unit.

The applicant asked that the rule be amended for everyone because “[r]egardless of their orders, all soldiers should have the same entitlements especially when they have been seriously injured to have the proper care needed as any other soldier stationed overseas especially in Southwest Asia.” He asked the Board to look into this inequitable treatment to help all veterans who have served and been injured overseas.

APPLICABLE LAW AND POLICY

PSCINST 1900.1B provides the following instructions for entering the amount of “foreign service” in block 12.f. of a DD 214:

Enter the years, months, and days of foreign service performed as defined in [DODI 1336.01] ... When an entry is entered in block 12f, ensure the Foreign Service remark in block 18 is added.

****Note:** The member **must** be TDY or PCS [temporarily or permanently assigned] to a **land area** in a foreign service eligible location (including vessels **homeported** in eligible locations) to be credited time. Port calls, leave/liberty, and time spend underway on a non-eligible cutter does not qualify for foreign service for the purpose of this block. ... [Emphasis in original.]

PSCINST 1900.1B states that if “foreign service” is noted in block 12.f., block 18 should contain the duration and location of each stint of “foreign service” in the following format: “00 YEARS, 03 MONTHS, 05 DAYS OF FOREIGN SERVICE PERFORMED IN LONDON, ENGLAND.”

PSCINST 1900.1B states that if the member is being discharged because of a physical disability, block 18 of a DD 214 should include the remark, “Member’s disability is combat related.” Members who later become disabled because of a combat-related disability may apply for Combat Related Special Compensation by filing a DD Form 2860.

The Navy’s DD 214 Instruction, BUPERSINST 1900.8E, defines “foreign service” as “[s]ervice performed outside the 50 United States or its commonwealths and territories (American Samoa, Northern Marianas Islands, Guam, Puerto Rico, and U.S. Virgin Islands,) except while on deployment.” (Emphasis added.)

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 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.¹ Although the applicant alleged that he discovered the error on his DD 214 in 2018, he received and signed his DD 214 in 2008. Therefore, the preponderance of the evidence shows that the applicant knew in 2008 that his DD 214 did not show any “foreign service” in block 12.f., 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.² In *Allen v. Card*, 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 Pursuant to these requirements, the Board finds the following:

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).

a. The applicant explained his delay by stating that he only learned in 2018 that having “foreign service” on his DD 214 would be an advantage in receiving treatment at the VA “more easily.” This justification for his delay is not compelling.

b. There is no evidence that a “foreign service” entry in block 12.f. on a DD 214 gives a veteran higher priority for treatment at the VA, and the VA’s own website contradicts this claim: <https://www.va.gov/health-care/eligibility/priority-groups/>. If the applicant was treated for an injury in a combat zone, the VA has presumably found that information in his medical records and accorded him the correct priority under its rules. If he believes that the VA has accorded him the wrong priority, he should speak to a VA Patient Advocate at the closest VA Medical Center. Entering his overseas deployment as “foreign service” on his DD 214 would not increase his priority at the VA, and his records show that he performed no “foreign service” as that term is defined by the Coast Guard, the Navy, and the Department of Defense.⁵ Furthermore, his DD 214 already reflects his service in the Persian Gulf because it shows that he was awarded the Global War on Terrorism Expeditionary Medal.⁶

4. Because this cursory review shows that the applicant’s claim lacks potential merit, the Board will not excuse the application’s untimeliness or waive the statute of limitations to conduct a thorough review. The applicant’s request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁵ PSCINST 1900.1B; BUPERSINST 1900.8E; and DODI 1336.01.

⁶ COMDTINST M1650.25E, Chap. 5.A.12. (To receive the Global War on Terrorism Expeditionary Medal, a member must have served in certain geographic areas in support of combat operations for at least 30 consecutive days or 60 non-consecutive days, and the listed areas include Oman, Yemen, the United Arab Emirates, and “that portion of the Arabian Sea north of 10 degrees North latitude and west of 68 degrees East longitude, BabEl Mandeb, Gulf of Aden, Gulf of Aqaba, Gulf of Oman, Gulf of Suez, that portion of the Mediterranean Sea east of 28 degrees East longitude, Persian Gulf, Red Sea, Strait of Hormuz, and Suez Canal.”)

ORDER

The application of former EM2 [REDACTED], USCG, for correction of his military record is denied.

January 31, 2020

