


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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-204


CWO4 (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 after receiving the applicant's completed application on August 22, 2019, and this decision was prepared pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated June 26, 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, a former Chief Warrant Officer (CWO4) who was discharged from the Coast Guard on March 31, 2014, asked the Board to issue him a DD 214¹ documenting the active duty time he performed during basic training and a Port Safety/Security Enlisted Course (PSSE). He also asked the Board to issue him a DD 214 documenting his active duty service during Operation Desert Shield and for performing armed security at a military base from July 15, 1991, to August 9, 1991, and from August 26, 1991, to August 29, 1991.

In support of his requests, the applicant submitted copies of the following:

- Orders directing him to the Reserve Training Center from July 10, 1988 to July 22, 1988, for active duty for training (ADT), and the purpose of duty is listed as COI – PSSE.

¹ The DD Form 214 provides the member and the service with a concise record of a period of service with the Armed Forces at the time of the member's separation, discharge or change in military status (reserve/active duty). In addition, the form is an authoritative source of information for both governmental agencies and the Armed Forces for purposes of employment, benefit and reenlistment eligibility, respectively. The DD 214 is issued to members who change their military status among active duty, reserve, or retired components or are separated/discharged from the Coast Guard to a civilian status. Reservists released from a period of continuous active duty for training (ADT) of less than 90 days are not eligible to receive a DD 214. COMDTINST M1900.4D.

- A Pay Adjustment Authorization stating that the applicant was issued ADT orders on May 25, 1984, but that his basic allowance for quarters (BAQ) requires adjustment.
- Orders directing him to report for ADT on July 15, 1984.
- A Reserve Career Development Interview Form and Request for ADT Order form that was prepared following the applicant's request for voluntary ADT.
- Reserve Orders and Pay Voucher ordering the applicant to report to a Marine Safety Office on July 14, 1991, for thirteen days of ADT.
- Reserve Orders and Pay Voucher ordering the applicant to report to a Coast Guard Reserve Unit on August 26, 1991, for four days of ADT.

The applicant stated that he discovered the alleged errors in his record on August 12, 2019, and argued that the Board should find it in the interest of justice to consider his application because he was told that the Social Security Administration will consider all of his active service documented on a DD 214 "for extra earnings for service between 1957 – 2001."

SUMMARY OF THE RECORD

The applicant's military record includes the following documentation:

- An enlistment contract shows that he enlisted in the Coast Guard Reserve as a PS3 for a term of six years on December 15, 1983. There is nothing in his record to show if he attended basic training.
- A Reserve Points Statement shows that he was recalled to ADT on or about July 15, 1984, to July 27, 1984, for 13 days.
- An Administrative Remarks form dated June 10, 1988, states that he completed the PSSE course that convened on July 11, 1988, and was completed on July 22, 1988. This time is accounted for on his 1987 - 1988 Reserve Points Statement.
- An enlistment contract shows that he reenlisted in the Coast Guard Reserve for a term of eight years on December 2, 1989.
- A Reserve Points Statements from December 1986 to December 1989 show that he performed several periods of ADT, none of which was lasted more than 90 days.
- A Reserve Points Statement shows that he was recalled to ADT for 12 days in April 1990.
- A Reserve Points Statement shows that he was recalled to ADT for 17 days in July and August 1991.
- A Reserve Points Statement shows that he was recalled to ADT for 12 days in May 1992.
- An enlistment contract shows that he reenlisted in the Coast Guard Reserve for a term of 8 years on December 2, 1997.

- A DD 214 shows that the applicant was released from active duty (RELAD) on June 30, 2003, having served on active duty for 5 months and 6 days. Block 12.d. indicates that he had no prior active service, while Block 28, Narrative Reason for Separation, states that he was discharged at the end of his active obligated service.
- A letter dated December 31, 2003, notified the applicant that he had at least 20 years of satisfactory federal service in the Reserve and will be eligible to receive retired pay when he reaches age 60.
- A DD 214 shows that the applicant was released from active duty (RELAD) on March 31, 2009, having served on active duty for 9 months and 14 days. Block 12.d. indicates that he had 6 years, 1 month, and 24 days of prior active service, and Block 28, Narrative Reason for Separation, states that he was discharged at the end of his active obligated service.
- A DD 214 shows that the applicant was released from active duty (RELAD) on March 31, 2011, having served on active duty for 1 year and 2 months. Block 12.d indicates that he had 2 years, 9 months, and 10 days of prior active service, and Block 28, Narrative Reason for Separation, states that he was discharged at the end of his active obligated service.
- Orders notified the applicant that he had been transferred to the United States Coast Guard Retired Reserve effective January 1, 2014.

APPLICABLE LAW AND REGULATIONS

COMDTINST 1900.4D was issued in 1993 and contains the Commandant's instructions for completing the DD 214. Chapter 1.B.10 states that the DD 214 will not be issued to reservists released from ADT of less than 90 days.

COMDTINST 1900.4B was issued on September 25, 1979, and contains the Commandant's instructions for completing the DD 214 in 1983. Enclosure 1 states that a DD 214 will be furnished to USCGR-RK trainees upon release from their second phase of IADT regardless of its length.

VIEWS OF THE COAST GUARD

On February 4, 2020, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion and recommended that the Board deny relief because the application is untimely and because the applicant is not eligible for a DD 214 for the training periods he identified on his application.

The JAG argued that the applicant is not eligible to receive DD 214s for the periods of service listed on his application because none of those periods lasted 90 days or longer, and pursuant to COMDTINST 1900.4C, only periods of active service of 90 days or more may be documented on a DD 214. Moreover, the JAG argued, these periods of ADT were properly captured on his annual reserve points statements and on the DD 214 that he received in March 2011.

The JAG noted that the DD 214s the applicant received in 2003 and 2009 do not appear to accurately account for his total net active duty service, but the JAG argued that the final DD 214 that he received in 2011 appears to be accurate and accounts for all of his prior active service, including the training periods discussed in his application.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 5, 2020, the BCMR sent the applicant a copy of the Coast Guard's recommendation, including copies of all three of his DD 214s and numerous Reserve Retirement Points Statements, and invited him to submit a response. The Board did not receive a response.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on 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 Reserve on January 1, 2014, and during his enlistment received a DD 214 in 2003, 2009, and 2011. Therefore, his application is untimely because he knew in 2014 that he did not have a DD 214 reflecting active service in 1991.

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 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 5 years after his discharge to request correction of his military record. He failed to show that anything prevented him from seeking correction of the alleged error or injustice more promptly.

b. The applicant has not submitted any evidence of error or injustice. His Notices of Separation (DD 214) correctly document the three periods of active duty in which he served 90 days or more, and copies of all three DD 214s have been mailed to

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

³ *Id.*; 33 C.F.R. 52.22.

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).

him, along with Reserve Points Statements which document his periods of ADT that were less than 90 days in length.

c. The applicant is not eligible to receive a DD 214 documenting the active service he performed during basic training because he enlisted in the Coast Guard in 1983 as a PS3 (pay grade E-4) so it is possible that he did not attend Coast Guard basic training. Moreover, the DD 214 instruction manual in effect in 1983 states that reservists will receive a DD 214 upon release from their second phase of IADT regardless of its length, but the applicant enlisted as a PS3 so he likely did not attend a second phase of IADT because he was already qualified for the PS rate and was not required to attend PS "A" School.

d. The applicant is not eligible to receive a DD 214 reflecting the active duty he performed during several periods of ADT because pursuant to Chapter 1.B.10 of the DD 214 instructions, DD 214s are only issued to document active duty of more than 90 days. His retirement points statement from December 15, 1987, to December 14, 1988, shows that he performed 13 days of ADT, which is presumably the time he spent at the PSSE course, and his retirement points statement from December 15, 1990, to December 14, 1991, indicates that he performed 13 days of ADT in July 1991 and 4 days in August 1991, which is presumably the time he spent performing armed security at a military base.

e. The JAG noted that the applicant's DD 214s from 2003 and 2009 do not accurately account for his total net active duty service, but that his final DD 214 from 2011 appears to be accurate and accounts for all of his prior active service. The Board disagrees. The applicant's DD 214 from 2003 indicates that he performed 5 months and 6 days of active service during that enlistment and had no prior active service. However, his DD 214 from 2009 indicates that he had 5 years, 1 month, and 14 days of prior active service but there is nothing in his record to account for 5 additional years of active service. His DD 214 from 2011 shows that he had only 2 years, nine months, and 10 days of prior active service, which is inconsistent with the total prior active service listed on his previous DD 214s. Accordingly, the Board should order the Coast Guard to prepare and send to the applicant a Statement of Creditable Service so that all of his active and inactive service is properly accounted for.

3. Accordingly, the Board will excuse the application's untimeliness and waive the statute of limitations to grant alternative relief. Although his request should be denied, the Board should order the Coast Guard to prepare a Statement of Creditable Service documenting all of the applicant's periods of active and inactive service until January 1, 2014. If the investigation for the preparation of the Statement of Creditable Service reveals that information about prior active or inactive service in Block 12 of the applicant's DD 214 dated March 31, 2011, is erroneous, then the Coast Guard should issue him a DD 215 to correct Block 12 of that final DD 214.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of CWO4 [REDACTED] USCGR (Retired), for correction of his military record is denied but alternative relief is granted. The Coast Guard shall prepare a Statement of Creditable Service for him to document all his active and inactive service until January 1, 2014. If the investigation for the preparation of that Statement of Creditable Service reveals that information about his prior active or inactive service in Block 12 of his DD 214 dated March 31, 2011, is erroneous, the Coast Guard shall issue him a DD 215 to correct Block 12 of the DD 214.

June 26, 2020

