


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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-211


BM3 (former)

FINAL DECISION

This is a proceeding under 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 September 4, 2019, and this decision of the Board was prepared pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated August 21, 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 Boatswain's Mate, third class (BM3) who was discharged from the Coast Guard Reserve on July 30, 1970, after completing a six-year enlistment, asked the Board to correct Block 19 of his DD 214 to indicate Active Duty instead of Active Duty for Training (ACDUTRA). He argued that Block 19 is incorrect and should be changed because he was scheduled to attend Fire Control Technician (FT) "A" School after completing basic recruit training but instead was assigned to sea duty aboard a Coast Guard cutter and served aboard that cutter for seven months and twenty-three days. The applicant argued that this time should have been recorded as active duty instead of ACDUTRA.

In support of the applicant's request, he submitted a copy of his DD 214 and an Honorable Discharge Certificate. The DD 214 shows that he served from August 18, 1964, to August 18, 1965, and that the time was served as ACDUTRA. The discharge certificate indicates that he was honorably discharged from the Coast Guard Reserve on July 30, 1970.

The applicant did not state when he discovered the alleged error in his record but argued that Block 19 is erroneous and should be corrected.

SUMMARY OF THE RECORD

The applicant's record shows that he enlisted in the Coast Guard Reserve on July 31, 1964, for a term of six years and was sent to basic recruit training. The record also shows that he failed his tenth week of recruit training which caused him to miss FT "A" School, and a November 24, 1964,

letter in his records shows that he was not sent to FT "A" School and instead was assigned to "duty afloat." The record shows that he was then assigned to a cutter where he served from December 10, 1964, through August 18, 1965. His Service Record Card indicates that his service aboard that cutter was ACDUTRA.

The applicant's DD 214 shows that he served on active duty from August 18, 1964, to August 18, 1965, and Block 19, Current Active Service Other Than By Induction, shows that the service was for ACDUTRA. The remarks block on the DD 214 states "Twelve months active duty for training completed."

VIEWS OF THE COAST GUARD

On March 3, 2020, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief. The JAG argued that the applicant's request to have his DD 214 corrected to show that his service aboard the cutter was active duty vice ACDUTRA should be denied because it is untimely and a review of his record reveals that he was assigned the cutter to facilitate on-the-job training (OJT) as a striker to become a BM because he failed to meet the standards for FT "A" School.

The JAG also argued that relief should be denied because the Board already determined that the applicant's active duty time was served for the purpose of ACDUTRA. The JAG noted that the applicant applied to the Board in 1970 asking to change the discharge date on his DD 214, and that the Board stated in its decision that the record "shows that he performed the required active duty for training as ordered and served in a drill pay status, until discharged on February 9, 1970." Therefore, the JAG argued, the Board has already "definitively determined" the applicant's status to be ACDUTRA during the time in question, and the Board should deny reconsideration and relief based on untimeliness, the doctrines of collateral estoppel and laches, and the applicant's failure to establish via a preponderance of the evidence that the Coast Guard committed an error or injustice.

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 views and invited him to respond within thirty days. He was granted an extension to respond to the Coast Guard's recommendation, but the Board did not receive a response.

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.¹ The applicant submitted his application to the Board on June 11, 2019, but he was discharged and received his DD 214 in 1965. Therefore, the Board finds that his application is untimely.

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

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 nearly 50 years after his discharge to request the change to 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 record shows that following recruit basic training he was assigned to the cutter for the purpose of on-the-job training so he could become a Boatswains Mate, and there are several documents in the record which state that the service was for ACDUTRA, including the November 24, 1964, letter; his Service Record Card; and his DD 214. The applicant’s allegations do not overcome the presumption of regularity accorded these records.⁵

3. In the absence of anything in the applicant’s record to show that his service aboard the cutter was not ACDUTRA, the Board should not waive the statute of limitations and should deny his request.

(ORDER AND SIGNATURES ON NEXT PAGE)

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).

⁵ 33 C.F.R. § 52.24(b).

ORDER

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

August 21, 2020

