

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2020-062

██████████
LTJG (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 completed application and military records on January 8, 2020, and this decision of the Board was prepared pursuant to 33 C.F.R. § 52.61(c).

This final decision, October 15, 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 Lieutenant Junior Grade (LTJG) who was discharged from active duty on December 2, 2011, asked the Board to correct his DD 214 to reflect his foreign and sea service. He alleged that his DD 214 should include foreign service because he served in Iraq and with ██████████ in the Gulf of Aden on the ██████████, a Navy destroyer. As further proof that he performed foreign service, he stated that his DD 214 indicates that he was awarded the Iraq Campaign Medal (ICM) and a Commendation Medal for service in the United States Central Command (CENTCOM). The applicant also alleged that his original travel orders to Iraq, his ICM, Relief as Deployable Team Leader (Iraq), and his Release from Operational Theatre (Iraq) are further evidence that he served in Iraq. Finally, he argued that the Navy Commendation Medal that he received is also proof that he served aboard the USS ██████████ in support of ██████████

The applicant submitted several documents in support of his request:

- (a) A DD 214 documenting his active service from August 6, 2008, to December 2, 2011.
- (b) A Military Temporary Additional Duty (TAD) Request and Travel Order stating that the purpose of his travel is for performing law enforcement duties that require transportation of firearms, ammunition, and pyrotechnics, in accordance with the ordnance manual.

- (c) A Coast Guard Commendation Medal and citation stating that he received the medal for outstanding service from January 2010 to November 2010 with the Maritime Safety and Security Team [REDACTED] and that he deployed overseas to CENTCOM for five months and was selected to lead a four-member team to deploy aboard the USS [REDACTED] as part of an elite anti-piracy task force.
- (d) A July 13, 2010, letter from the applicant to another LTJG acknowledging the transfer of gear from one Maritime Safety and Security Team (MSST) to another MSST.
- (e) A letter dated October 11, 2010, from Commanding Officer, Iraqi Training and Advisory Mission, [REDACTED] to Commanding Officer, Task Force [REDACTED], releasing the applicant from the Operational Theater effective October 14, 2010.
- (f) A Statement of Creditable Service showing that the applicant served on active duty in the Coast Guard for 3 years, 3 months, and 27 days.

The applicant stated that he discovered the alleged errors in his record on December 15, 2019.

SUMMARY OF THE RECORD

The applicant signed a document on January 10, 2008, agreeing to training under the Officer Candidate Program of the Coast Guard Reserve. It states that if selected for the program, he would enlist for a period of 8 years in the Ready Reserve of the U.S. Coast Guard as a Seaman Apprentice (Officer Candidate) and, if offered an appointment, serve on active duty as an Ensign in the U.S. Coast Guard Reserve for a period of three consecutive years.

The applicant enlisted in the Coast Guard Reserve on July 22, 2008, in the paygrade E-2, for a term of 8 years, with 3 years to be served on active duty and the remaining 5 years to be served in the Reserves. On the same day, a Recruiter in Charge notified him via memorandum that effective immediately, he would be assigned to the inactive reserve until a later date at which time he should report to the U.S. Coast Guard Academy, New London, Connecticut, for assignment to temporary duty under instruction in the Officer Candidate School for a period of approximately seventeen weeks and further assignment by the Commandant.

On December 3, 2008, the applicant signed an active duty agreement wherein he agreed to serve on active duty for a term of at least three years.

The applicant's pay records show that he received Imminent Danger Pay from June 1, 2010, to October 31, 2010. And upon inquiry by a BCMR staff member, the Coast Guard stated that he had received a combat tax exclusion for his pay during his deployment from June to October 2010.

On December 2, 2011, the applicant was released from active duty after serving honorably for 3 years, 3 months, and 27 days. Block 12.f. of his DD 214 indicates that he did not perform any foreign service during his enlistment, and Block 12.g. shows that he performed 29 days of sea service. His DD 214 also shows that during his enlistment he received the Coast

Guard Pistol Marksman Ribbon, a Coast Guard Commendation Medal, and the Iraq Campaign Medal on October 10, 2010.

APPLICABLE LAW AND REGULATIONS

COMDTINST M1900.4D contains the instructions for completing the DD 214, and states that Block 12.f (foreign service) should contain the years, months, and days of foreign service from the date entered in Block 12.a. through the date entered in Block 12.b. It also states that Block 12.f. shall include all periods of service performed in the foreign duty pay areas listed in Chapter 4, Section A of the Coast Guard Pay Manual, COMDTINST M7220.29 (series).

The DD 214 instruction states that Block 12.g. (sea service) should contain the years, months, and days of sea service from the date entered in block 12.a. through the date entered in block 12.b. The sea service computation entered in this block will be sea service performed which qualifies the member for payment under the Career Sea Pay Law. (See Chapter 4, Section B, Coast Guard Pay Manual, COMDTINST M7220.29 (series).

Chapter 4.H. of COMDTINST M7220.29, the Coast Guard Pay Manual, states that Hostile Fire or Imminent Danger Pay (HF/IDP) is a special pay to compensate uniformed service members who perform duty in a foreign area designated by the Secretary of Defense (SECDEF) as duty in which members are subject to the threat of physical harm or imminent danger on the basis of civil insurrection, civil war, terrorism, or wartime conditions. HF Pay is a special pay to compensate uniformed service members who have been subjected to hostile fire or explosion of hostile mines or were killed, injured, or wounded by hostile fire, explosion of a hostile mine, or any other hostile actions. IDP is an entitlement payable to members who, as certified by the member's commanding officer, perform duty in a foreign area designated by SECDEF as an imminent danger area for the purposes of IDP.

Chapter 5.A.10. of COMDTINST M1650.25E, the Coast Guard Military Medals and Awards Manual, states that the Iraq Campaign Medal (ICM) may be awarded to members who were assigned, attached, or mobilized to units participating in direct support of Operation Iraqi Freedom (OIF). They must have been a bona fide member of a unit participating in or directly supporting the operation for 30 consecutive days in the area of eligibility (AOE) or for 60 non-consecutive days provided this support involves entering the operation's AOE or meets one or more of the following specific criteria:

- a) Be engaged in combat during an armed engagement, regardless of the time in the AOE.
- b) While participating in the operation or on official duties, is wounded or injured and required medical evacuation from the AOE.
- c) While participating as a regularly assigned air crewmember flying sorties into, out of, within, or over the AOE in direct support of the military operations. Each day counts as one day of eligibility.

VIEWS OF THE COAST GUARD

On June 10, 2020, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in accordance with a memorandum submitted

by the Commander, Personnel Service Center (PSC). The JAG stated that a review of the applicant's personnel records does not establish when he reported for duty that would qualify him for foreign service or sea service. However, the JAG added that if the applicant is willing to resubmit documents establishing when he was assigned foreign service or sea service, then the Coast Guard would support reconsideration of his request to have foreign service added to his DD 214.

PSC argued that the application is untimely and that relief should be denied because there is a lack of sufficient information to grant the relief requested. PSC agreed that the information provided by the applicant shows that he served overseas from an undetermined date to October 11, 2010, as substantiated by the October 11, 2010, memorandum releasing him from the operational theater. However, PSC noted that the exact dates of foreign service are not listed on the applicant's March 7, 2011, Commendation Medal, and argued that the dates on the citation to the commendation may not be accurate, as the timeframe on the citation ends November 2010, and the October 11, 2010, memorandum states that the Applicant was released from foreign service on October 14, 2010.

PSC also stated that the applicant's record does not contain any temporary duty orders and/or travel claims because they are not allowed to be maintained in a personnel service record and noted that the applicant did not provide any of these documents to substantiate the dates of foreign and sea service he is requesting. PSC stated that if the applicant has these documents in his possession and provides them to the Coast Guard, then PSC would be able to make a more informed recommendation.

Regarding the applicant's claim that his service aboard the USS [REDACTED] is proof that he performed foreign service, PSC stated that the citation to his Commendation Medal does not list the dates of team or individual assignment to that Navy ship, nor does his Member Information Sheet list any dates that he was deployed to a foreign service area or aboard the USS [REDACTED].

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 18, 2020, the BCMR sent the applicant a copy of the Coast Guard's recommendation and invited him to submit a response. The applicant responded on June 26, 2020, and disagreed with the Coast Guard's recommendations. He stated that although the Coast Guard suggested that he submit records that would support reconsideration, he cannot locate his original travel orders to the USS [REDACTED]. Instead, he noted that he served in Iraq from July 1, 2010, through October 11, 2010, but that paragraph 4(h) of the advisory opinion inexplicably suggests that he served an undetermined amount of time in theatre. As proof of his foreign service, he stated that with his application he had submitted his original travel orders dated June 22, 2010, his Release from Operational Theatre, and that sections A and B of his original travel orders to CENTCOM, Manama, Bahrain; and [REDACTED] Iraq clearly list the foreign locations in which he served. The applicant also noted that Section C of his original travel orders clearly reflect his arrival in [REDACTED], Iraq on July 1, 2010. The applicant also asked the Board to look at the October 11, 2010, Release from Operational Theater form which is signed by the Executive Officer of the Iraqi Training and Advisory Mission. Thus, he argued, according to the

documentation he submitted, he accumulated at least three months and ten days of foreign service. The applicant also noted that the amount of time in theater is common for high speed law enforcement detachment teams (LEDET), which typically spend only three to four months in operational theatres due to the high volume of missions and work they are tasked with.

The applicant also reminded the Board that in support of his application he submitted proof that he received the ICM, a Commendation Medal, and Relief of Deployment Team Leader Iraqi Training Advisory Mission letter, all of which he received in connection with his service in Iraq and aboard the USS [REDACTED]. He noted that while these documents related to commendations may not establish that he served a specific amount of time in Iraq or at sea, he believes the JAG should have treated his case “with a bit more respect and care” given his honorable service. Finally, the applicant stated the following:

While I am no longer in the Coast Guard, I cannot help but feel that due to my inactive status, this matter was briefly glossed over and a careless recommendation was made. Unfortunately, this seems to be reflective of a pattern that I have observed. Not long ago, I had to assist one of my former teammates (with whom I deployed) in making the exact same correction to his DD 214 (which I will point out was granted). I also understand, as noted in FN1 of the AO, that my request is not timely as it was not made within three years of separation. However, the recommendation in the AO that I be denied credit for my foreign service is certainly an injustice that is within the BCMR’s power to avoid.

I served my country honorably in Iraq, and the Coast Guard undoubtedly has extensive records relating to my service. To be perfectly frank, I find the AO’s recommendation insulting to me and to any other service members that have been deployed to combat zones. It should not be incumbent upon our veterans of foreign wars to prove their service to the organization in which they served in support of our country’s mission in the Middle East, and it shows a serious lack of respect to require our veterans to jump through hoops just to receive a piece of paper crediting such service. I am owed an accurate record for my service in Iraq. “Zero” listed under my foreign service is unacceptable, and its continued presence on my DD 214 is an injustice that I ask the BCMR to remedy. For these reasons, I respectfully request that the BCMR make a decision in my favor and amend my DD 214 to reflect my foreign service.

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 must be filed within three years of the date that the applicant discovers the alleged error or injustice.¹ The applicant was discharged from active duty and received his DD 214 on December 2, 2011, but did not submit his application to the Board until December 18, 2019, more than 8 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

¹ 10 U.S.C. § 1552(b).

² *Id.*; 33 C.F.R. 52.22.

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 Although the applicant did not justify his delay in seeking correction of his DD 214, because the record shows that it is erroneous, as explained below, and he needs to have it corrected to prove his service in a combat zone, the Board finds that it is in the interest of justice to waive the statute of limitations and will consider the case on the merits.

3. The applicant asked the Board to correct his DD 214 to reflect the foreign service that he performed during his three-year enlistment. The JAG recommended that the Board deny relief, arguing that there is nothing in the record to prove that the applicant performed any foreign service, although the JAG noted that his pay from June 2010 to October 2010 was subject to combat tax exclusion. The Board disagrees with the JAG’s recommendation because the applicant’s record contains several items which show that he performed foreign service during his enlistment from 2008 to 2011. First, his record shows that he received the ICM, which is awarded only to members who were assigned, attached, or mobilized to units in direct support of Operation Iraqi Freedom, so his receipt of the medal is evidence that he performed foreign service in Iraq. In addition, the citation for his Commendation Medal states that he served overseas for five months, which is further evidence that he served overseas. Finally, the Board notes that the applicant’s pay records show that he received imminent danger pay (IDP) from June 1, 2010, to October 31, 2010, and the Pay Manual states that IDP is special pay to compensate members who perform duty in a foreign area in which members are subject to the threat of physical harm or imminent danger on the basis of civil insurrection, civil war, terrorism, or wartime conditions. Therefore, the Board finds that the applicant has established by a preponderance of the evidence that he performed foreign service in a combat zone from June 2010 to through October 2010 and his DD 214 should be corrected accordingly.

4. The applicant also asked to Board to correct his DD 214 to reflect all of the sea service that he performed during his enlistment, but he did not state how much sea service he performed nor did he submit anything which specifically shows how much time he spent aboard a ship at sea. Block 12.g of his DD 214 shows that he performed 29 days of sea service during his enlistment from August 6, 2008, to December 2, 2011, so his record does support his allegation that he performed some sea service. However, the Board notes that aside from his DD 214, there is nothing else in the record which definitively shows that he performed more sea service than what his DD 214 indicates. The citation to his Commendation Medal states that he served aboard the USS [REDACTED], but it does not specifically state how much time he was on the ship. Therefore, in the absence of additional evidence of sea service beyond the 29 days already listed on his DD 214, the Board should deny the applicant’s request to add more sea service to his DD 214.

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. The applicant's request to add his foreign service to his DD 214 should be granted, but his request to add additional sea service to his DD 214 should be denied. Accordingly, the Board should order the Coast Guard to correct the applicant's DD 214 dated December 2, 2011, by creating a DD 215 correcting Block 12.f. of his DD 214 to reflect the amount of foreign service he performed from June 2010 to October 2010 as proven by his receipt of IDP.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former LTJG [REDACTED], USCGR, for correction of his military record is granted in part. The Coast Guard shall correct his DD 214 dated December 2, 2011, by issuing a DD 215 that corrects Block 12.f. of his DD 214 to show the amount of time for which he received Imminent Danger Pay as a result of his foreign service from June 2010 to October 2010.

October 15, 2020

