

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2020-144

██████████ ██████████ ██████████
SR (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 on October 6, 2020, and assigned the case to the Deputy Chair to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated January 27, 2023, 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 Seaman Recruit (SR/E-1)¹ who was discharged under other than honorable (OTH) conditions on July 28, 2016, asked the Board to correct his record by issuing him a separate DD-214² to document his first enlistment.

The applicant stated that he served honorably during his first enlistment from March 21, 2006, until April 23, 2013. He argued that without a DD-214 documenting his first enlistment, he is unable to buy back his honorable service as a government civilian employee.

Regarding the delay in his application, the applicant stated that he did not discover the alleged error in his record until he attempted to buy back his honorably served time.

¹ The Coast Guard's database shows that the applicant was demoted from E-5 to E-1 on June 2, 2016, a few weeks before his discharge.

² 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. COMDTINST M1900.4D.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on March 21, 2006, for a term of four years, through March 20, 2010.

On April 25, 2008, the applicant voluntarily extended his enlistment for a period of 2 years and 9 months. The effective date of his extension was March 21, 2010. The applicant's new expiration date of his enlistment was December 20, 2012.

On January 20, 2009, the applicant voluntarily extended his enlistment for a period of 2 months. The effective date of his extension was December 21, 2012. The applicant's new expiration date of his enlistment was February 20, 2013.

On December 9, 2011, the applicant voluntarily extended his enlistment for a period of 5 months. The effective date of his extension was February 21, 2013. The applicant's new expiration date of his enlistment was July 20, 2013.

On April 24, 2013, the applicant ended his first enlistment period by reenlisting in the Coast Guard for a term of three years.

On May 15, 2016, the applicant, after consulting with his defense counsel and in exchange for good consideration, entered a guilty plea for committing assault consummated by a battery in violation of Article 128 of the Uniform Code of Military Justice.

On May 19, 2016, as part of his plea agreement, the applicant requested to be discharged from the Coast Guard due to his misconduct in accordance with Article 1.B.17. of the Military Separations Manual. He requested his discharge be characterized as OTH conditions. He acknowledged that he had been informed that if his request for an OTH discharge was accepted, he could encounter substantial prejudice in situations in which the character of separation from the Armed Forces might have a bearing.

On June 2, 2016, CAPT M sent a memorandum to the Enlisted Personnel Management Division of the Personnel Service Center. In the memorandum, CAPT M recommended that the applicant be discharged by reason of misconduct for the commission of a serious offense. CAPT M noted that the applicant requested an OTH discharge in accordance with the terms of his pre-trial agreement at a Special Court-Martial. CAPT M stated that he fully endorsed the applicant's request.

On July 28, 2016, the applicant was discharged. His DD-214 shows "Under Other Than Honorable" as the character of discharge; "Triable by Court Martial" as the narrative reason for separation; RE-4 (ineligible for reenlistment) as his reenlistment code; and KFS (triable by court-martial) as his separation code. Block 18 states the following:

Continuous honorable active service from 2006 03 21 to 2013 04 23. Enlistment/active service term extended for 02 years 09 months on 2010 03 21, for 02 months on 2012 12 21, for 05 months on 2013 02 21 and for 05 months on 2016 04 24. Extension was at the request of and for the

convenience of the government. This DD-214 covers multiple enlistments/reenlistments as reflected in Blocks 12A, 12B, and 12C. The following information applies regarding each enlistment/reenlistment period of service: 2006 03 21 to 2013 04 23 character of service: honorable. Period of service: 2013 04 24 to 2016 07 28 character of service: under other than honorable condition, no discharge certificate authorized.

VIEWS OF THE COAST GUARD

On April 8, 2021, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC argued that the applicant's application is not timely. Regarding the merits of the case, PSC argued that the applicant's DD-214 already contains the necessary statement regarding continuous honorable service. Further, PSC argued that Coast Guard policy does not allow for the applicant to be issued a completely separate DD-214 for his first enlistment.

The JAG argued that the applicant failed to show that the Coast Guard committed an error or injustice. The JAG stated that the applicant's DD-214 accurately reflects his entire period of service in accordance with the PSC Instructions on the DD-214, which was issued in July 2017. Further, the JAG noted that Block 18 of the applicant's DD-214 already shows that he completed continuous honorable active service from March 21, 2006, to April 23, 2014. Finally, the JAG argued that Coast Guard policy does not contemplate the "splitting" of a DD-214.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 23, 2021, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. In his response, the applicant reiterated his request to have another DD-214 issued to document his honorable service.

The applicant acknowledged that he made a mistake while he served in the Coast Guard. However, he stated that he learned from his mistake and became a better person. Most recently, he was hired as a civilian at a Naval Shipyard. He stated that he requested to buy back his honorable time spent in the military but that his request was denied because of the nature of his discharge. The applicant stated that he provided his DD-214 to his employer to prove that he served honorably. However, his employer refuses to acknowledge his honorable service. He stated that if his request is granted, he hopes that he will be allowed to buy back his time. The applicant stated that this would allow him to retire seven years early and spend more time with his children.

To support his request, the applicant submitted four character references. The letters describe the applicant as compassionate, kind, hard-working, trustworthy, honest, and respectful.

APPLICABLE LAW AND POLICY

According to Article 1.A. of the Instructions for the Preparation of the DD Form 214, the criteria for the issuance of a DD-214 is as follows: "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 civilian status.”

Article 1.A.E. of the manual includes the instructions for completing the various blocks on the DD-214.

Block 18. Remarks. Entries in this block consist of information not shown elsewhere on the form. Only the entries specified below or in supplementary directives will be made in this block. (See Chapter 10, Section 1, CG PAYMAN, COMDTINST M7220.29 (series)). Repetition of information included in other blocks adds nothing and obscures essential data. Any unused space will be filled in diagonal “X”s”.

7. Extension of Enlistment/Active Service. When a members enlistment or active duty commitment was extended, except for the purpose of making up lost time under Title 10, U.S.C. 972, the term of such extension shall be entered in block 18 as shown below. For purposes of reemployment rights under PL 90-491, any extension of enlistment or active service, whether voluntary or involuntary, is considered to have been for the Convenience of the Government and shall be so noted on the DD Form 214 as follows: “Enlistment/Active service term extended for (term) to (date). Extension was at the request of and for the Convenience of the Government.”

...

14. Enlistment/Reenlistment Information: Enter the following statement, inserting the appropriate Period of Service, Reenlistment (RE) Code, Separation Program Designator (SPD) and Time Lost (TL) during this period as shown below. “This DD-214 covers multiple enlistments/reenlistments as reflected in blocks 12a, 12b, and 12c. This following information applied regarding each enlistment/reenlistment:”

Period of Service	RE Code	SPD	TL
86 02 01 to 89 03 01	RE-1	JBK	None
89 03 02 to 93 04 03	RE-1	JBK	None

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.
2. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.³ The record shows that the applicant signed and received his DD-214 when he was discharged on July 28, 2016. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error—his receipt of only one DD-214 covering his entire military service—in his record in 2016, 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.⁴ In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the Board

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

⁴ 10 U.S.C. § 1552(b).

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”⁵ 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.”⁶ Pursuant to these requirements, the Board finds the following:

a. Regarding the delay in applying to the Board, the applicant explained that he did not discover the alleged error in his record until he attempted to buy back his honorably served time from his new employer. The Board finds that the applicant’s explanation for the delay is not compelling because he failed to show that anything prevented him from seeking correction of the alleged error or injustice more promptly.

b. A cursory review of the merits of this case shows that the applicant’s claim lacks potential merit. The applicant argued that he should be issued a second DD-214 to document his first enlistment. However, the applicant did not cite any Coast Guard policy to support his request. According to Article 1.A. of the Instructions for the Preparation of the DD Form 214, a 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 civilian status.” In this case, the applicant did not receive a DD-214 after his first enlistment because there was no change to his military status. Instead, the applicant immediately reenlisted for a term of three years. In fact, the applicant’s record shows that there was no change to his military status from the time he enlisted on March 21, 2006, until his discharge on July 28, 2016. At that point, the applicant properly received his DD-214. Further, his DD-214 already documents the time in which he honorably served. Block 18 of the applicant’s DD-214 properly shows that he completed continuous honorable active service from March 21, 2006, until April 23, 2013. The disputed record is presumptively correct,⁷ and the record contains no persuasive evidence that substantiates his allegations of error or injustice in his official military record.

4. Accordingly, the Board will not excuse the application’s untimeliness or waive the statute of limitations to conduct a thorough review of the merits. The applicant’s request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁵ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁶ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

⁷ 33 C.F.R. § 52.24(b); *see Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (citing *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979), for the required presumption, absent evidence to the contrary, that Government officials have carried out their duties “correctly, lawfully, and in good faith.”).

ORDER

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

January 27, 2023

[REDACTED] [REDACTED] Digitally signed by [REDACTED] [REDACTED]
Date: 2023.01.31 16:57:20 -05'00'

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] Digitally signed by [REDACTED] [REDACTED]
Date: 2023.02.14 13:52:10 -05'00'

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] Digitally signed by [REDACTED] [REDACTED]
Date: 2023.02.14 14:13:39 -05'00'

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