

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2021-024


LCDR (Retired)

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 February 11, 2021, and this decision of the Board was prepared pursuant to 33 C.F.R. § 52.61(c).

This final decision, April 22, 2022, 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 Lieutenant Commander (LCDR) who retired from the Coast Guard Reserve on December 1, 2017, asked the Board to correct his record by issuing him a DD 214¹ documenting all of the service he performed in the Coast Guard Reserve. In the alternative, he asked the Coast Guard to provide him an NA Form 13038² reflecting all of his Reserve service.

¹ The DD 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.

² The NA Form 13038 is primarily used to replace a lost or destroyed DD 214 (or equivalent). The form serves as verification of military service and may be used for any official purpose. When the request pertains to a non-fire-related record, NA Form 13038 shall NOT be prepared when it appears that a DD 214 was NEVER issued for the requested period of service; e.g., veteran specifically requests a copy of DD 214 indicating honorable service for a prior period of service when all periods of service are documented on one DD 214 and the final discharge is other than honorable. National Personnel Records Center Memorandum (NPRC) 1865.51, July 30, 1990.

The applicant stated that he needs all of his Reserve service documented on a DD 214 so that his dependent children can obtain education benefits in Texas via the Hazlewood Act.³ He stated that the Texas Veterans Commission will not give him credit for active duty time unless it is documented on a DD 214 or NA Form 13038. He argued that not having his Reserve time documented on a DD 214 or Form 13038 is a “grave injustice and discredits my military service.” The applicant stated that he is no longer able to work because he is 100% disabled after his 24 years of service in the Coast Guard. The applicant stated that he needs a DD 214 or NA Form 13038 so that his children can attend college because he has no other way to pay for their education.

In support of his request, the applicant stated that he performed active duty service in the Coast Guard Reserve on the following dates:

7/8/2009 to 7/27/2009	ADT-AT 10 U.S.C, 1230I(b)
5/12/2010 to 5/13/2010	ADT-AT 10 U.S.C. 1230I(b)
5/14/2010 to 7/12/2010	TITLE 14 10 U.S.C. 1230I(b)
4/2/2012 to 4/13/2012	ADT-AT 10 U.S.C 12301(b)
5/20/2013 to 5/31/2013	ADT-AT 10 U.S.C. 1230I(b)
8/30/2013 to 9/13/2013	ADOS-AC 10 U.S.C. 1230I(d)
6/16/2014 to 6/27/2014	ADT-AT JOU S C. 1230I(b)
6/30/2014 to 7/31/2014	ADOS-AC JO U.S.C. 1230I(d)
6/15/2015 to 6/26/2015	ADT-AT 10 U.S.C. 1230I(b)
6/29/2015 to 7/31/2015	ADOS-AC 10 U.S.C 1230 I(d)
8/1/2015 to 8/7/2015	ADOS-AC 10 U.S.C. 1230I(d)
6/20/2016 to 7/1/2016	ADT-AT 10 U.S C. 1230I(b).

SUMMARY OF THE RECORD

The applicant was appointed as a cadet in the Coast Guard Academy on July 7, 1993. On May 20, 1997, he graduated from the Coast Guard Academy and was commissioned as an ensign.

The applicant was discharged from active duty on June 30, 2008. Block 12.c. of his DD 214 shows that he completed eleven years, one month, and ten days of net active service.

On August 28, 2008, the applicant accepted an appointment in the Coast Guard Reserve, which is documented on an Acceptance and Oath of Office form. The form also shows that at the time, his legal residence was in a city in Texas.

The applicant received a second DD 214 documenting his active duty service performed during a contingency operation from May 12, 2010, to July 12, 2010. Block 12.c. shows that he served 2 months and 2 days of net active service for this period.

³ The Hazlewood Act is a State of Texas benefit that provides qualified Veterans, spouses, and dependent children with an education benefit of up to 150 hours of tuition exemption, including most fee charges, at public institutions of higher education in Texas, <https://www.tvc.texas.gov/education/hazlewood/> (last visited on February 24, 2022).

VIEWS OF THE COAST GUARD

On May 27, 2021, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant alternative relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC recommended that the applicant's request to receive a DD 214 or NA Form 13038 documenting his service in the Coast Guard Reserve be denied. PSC argued that according to the Commandant's instructions for completing the DD 214, the applicant was not eligible to receive a DD 214 at the end of his Reserve service because he did not perform active duty or active duty for training of at least 90 days.

In addition to adopting PSC's findings and analysis, the JAG provided the Board with a copy of the applicant's Retirement Point Summary and argued that it should be sufficient to allow him access to the state's educational benefit program.⁴ The summary, prepared on February 16, 2021, indicates that the applicant served 365 or 366 days on active duty each year from May 21, 1997, to May 20, 2008. The summary also shows the number of days the applicant served on active duty in the Reserve until his retirement on November 30, 2017. Starting from 2009 and ending in 2017, the applicant served the following days of active duty: 21, 58, 24, 1, 26, 44, 52, 0, and 0.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 2, 2021, the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. The BCMR did not receive a response.

ADDITIONAL PROCEEDINGS

In July 2021, a staff member of the Board spoke with the applicant regarding the recommendation of the Coast Guard. The applicant explained that he needs a document showing that he signed his Acceptance and Oath of Office in Texas in order for his dependents to be eligible to receive education benefits. Moreover, he argued that all of his Reserve time equals more than 180 days and therefore should be documented on a DD 214.

APPLICABLE 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 continuous active duty for training of less than 90 days.

Article 2.d(1) of the Department of Defense Instruction Number 1336.01, states that reserve component personnel ordered to active duty for a contingency operation will be issued a DD Form 214 regardless of the number of days served on active duty.

⁴ The Retirement Point Summary was mailed to the applicant with the Coast Guard's advisory opinion.

Chapter 3 of the National Personnel Records Center (NPRC) Instruction 1865.51 states that the NA Form 13038, Certification of Military Service, is primarily used to replace a lost or destroyed DD 214. The NA Form 13038 cannot be prepared if the service member was a reservist who performed no active duty or active duty for training for 90 days or fewer, nor prepared to verify service for which a separation document would not have been issued.

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.⁵

2. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice. The applicant was discharged from the active component of the Coast Guard on June 30, 2008, retired from the Reserves on December 1, 2017, and submitted his application to the Board on December 15, 2020. The Board finds that the applicant knew or should have known that his DD 214 did not reflect all of his Reserve service when he retired in 2017. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in 2017, 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.⁶ 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”⁷ 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.”⁸ Pursuant to these requirements, the Board finds the following:

a. The applicant waited more than three years after retiring from the Reserves to submit an application to the Board. He provided no explanation for his delay in seeking correction of his DD-214 and no compelling argument that it is in the interest of justice for the Board to excuse his delay.

b. A cursory review of the merits of this case shows that the applicant's claim lacks potential merit. The applicant argued that he is eligible to receive a DD 214 reflecting all of the Reserve service he performed following his discharge from active duty in 2008. The record shows that he served in the Reserves from August 28, 2008, to November 30, 2017. During that

⁵ 10 U.S.C. § 1552(b).

⁶ *Id.*; 33 C.F.R. 52.22.

⁷ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁸ *Id.* at 164, 165; see also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

time, he received a DD 214 documenting his active duty service during a contingency operation from May 12, 2010, to July 12, 2010. However, the Board finds that he is not eligible to receive a DD 214 documenting his remaining Reserve service. The Commandant's instructions for completing the DD 214 states that a DD 214 will not be issued to reservists released from continuous active duty for training of less than 90 days. There is nothing in the record, nor did the applicant submit anything, to show that he performed continuous active duty for training for at least 90 days. The applicant also asked the Board to provide him with an NA Form 13038. The Board notes that the NA Form 13038 is prepared by the NPRC. As such, the Board cannot order the NPRC to produce the form to document his Reserve service. Therefore, the disputed record is presumptively correct,⁹ 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.

5. The applicant requested a copy of his Acceptance and Oath of Office showing that he signed the document while living in Texas. This document was not provided to him with the Coast Guard's advisory opinion, so the Board should include a copy with this Final Decision.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁹ 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 Retired LCDR [REDACTED] [REDACTED] USCGR, for correction of his military record is denied, but the Board will provide him with a copy of his Acceptance and Oath of Office dated August 28, 2008.

April 22, 2022

[REDACTED] [REDACTED] Digitally signed by [REDACTED]
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