

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2021-088


SR

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 June 18, 2021, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated April 11, 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) who was dishonorably discharged on March 23, 2000, for multiple violations of the Uniform Code of Military Justice (UCMJ) asked the Board to correct his record by providing him with a DD-214 reflecting his honorable service for his first four years of service.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on February 11, 1992, for a period of four years, through February 10, 1996.

On March 3, 1995, the applicant executed an agreement to extend his enlistment for 1 year, 5 months, moving his enlistment expiration to July 10, 1997.

On October 30, 1995, the applicant executed a second agreement to extend his enlistment for 1 year, 7 month, moving his enlistment expiration to February 10, 1999.

On May 18, 1996, the applicant was convicted of having violated multiple articles of the UCMJ in 1995, including rape, breaking and entering, unlawful entry, unlawfully grabbing wrists,

assault with intent to commit rape, wrongful communication of a threat, breach of the peace, and theft of military property. The applicant was sentenced to 10 years of confinement, reduction in paygrade to E-1, forfeiture of all pay and allowance, a dishonorable discharge, and a \$5,000 fine.

The applicant appealed his conviction and on December 8, 1998, the Coast Guard Court of Criminal Appeals affirmed the applicant's conviction, and approved, with slight modifications, the applicant's sentence.

On March 23, 2000, the applicant was dishonorably discharged, with a notation that from May 18, 1996, through March 23, 2000, there was time lost due to confinement.

VIEWS OF THE COAST GUARD

On October 22, 2022, a judge advocate (JAG) of the Coast Guard submitted a memorandum in which he recommended that the Board deny relief and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

The JAG argued that the applicant has failed to submit a timely application and has failed to provide a justification for his delay in applying for relief. The JAG explained that the applicant was dishonorably discharged on March 23, 2000, and upon his discharge was provided with a DD214 noting the characterization of his discharge and the reason for his discharge. The JAG argued that this DD214 should have put the applicant on notice of the error or injustice he now claims. The JAG stated that the applicant provided no legitimate reason to account for his over twenty year delay in applying for relief.

The JAG further argued a cursory review of the merits shows that the applicant has provided no evidence to prove an error or injustice occurred. According to the JAG, the DD214 provided by the applicant with his application for relief shows that there was no discharge or break in service at the four year mark, but that the applicant served continuously, so the applicant was not entitled to a separate DD214. Because the applicant has failed to show that he was entitled to a separate DD214 and has failed to provide good cause for his delay in applying for relief, the JAG argued it is not in the interest of justice to waive the statute of limitations.

Finally, the JAG argued that even if the Board determines that there is good cause to waive the statute of limitations, the applicant still failed to overcome the presumption of regularity afforded to the Coast Guard.¹ The JAG also argued that the applicant also bears the burden of proving error, which he has failed to do here. The JAG stated that the applicant has offered no evidence to prove that the Coast Guard committed an error. The JAG further stated that all evidence illustrates that there was no period, prior to the applicant's dishonorable discharge, where he was released and reenlisted that may have entitled him to a separate DD214. Therefore, the JAG argued that the applicant's request for relief should be denied.

¹ *Arens v. United States*, 969 F.2d. 1034, 1037 (1992).

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 22, 2022, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. As of the date of this decision, no response was received.

APPLICABLE LAW AND POLICY

The Certificate of Release or Discharge from Active Duty, DD-214, Manual, PSCINST M1900.1B, provides the following relevant guidance on how time spent in the Coast Guard should be reflected on a DD-214:

1.A. Criteria for Issuance: 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.

...

2. Block by Block Completion of the DD-214.

...

n. Block 12a. Date Entered Active Duty this Period. In accordance with reference (a), the date of **shall** be the date the member entered active duty for the earliest period of continuous active service for which a DD-214 was not 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 over this matter under 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in his Coast Guard military record. The Board finds that the applicant has exhausted his administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued.

2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.

3. The application filed by the applicant was not timely. To be timely, an application for the correction of a military record must be submitted to the Board within three years after the alleged error or injustice was discovered.² The record shows that the applicant received notice of his characterization of discharge and the period of enlistment covered by his DD214 covered on March 23, 2000, when he received his DD214. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in March of 2000, yet did not submit his application to the Board until November 5, 2018. His application is therefore untimely.

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

4. 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 “analyzing 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 Pursuant to these requirements, the Board finds the following:

a. Regarding his delay in filing his application, the applicant failed to explain what caused his delay in applying to the Board for relief. The Board finds that the applicant’s request for consideration is not persuasive 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 regarding entitlement to a separate DD214 lacks potential merit. The record shows that the applicant entered into active duty on February 11, 1992, and that in 1995, before his original term of enlistment ended, he committed the many criminal offenses of which he was later convicted. In addition, he executed extensions that extended his original enlistment through February 10, 1999. Then on May 18, 1996, the applicant was convicted of violating multiple article of the UCMJ and was sentenced to 10 years of confinement, reduction in paygrade to E-1, forfeiture of all pay and allowances, a dishonorable discharge, and a \$5,000 fine. Therefore, at the time of the applicant’s conviction, he was still under the terms of his original enlistment, and he had had no break in service that would have entitled him to two separate DD214s. These records are presumptively correct,⁶ and the applicant has submitted nothing to refute them.

5. Accordingly, with respect to the applicant’s request for a separate DD214 for his initial four years of service, the Board will not excuse the application’s untimeliness or waive the statute of limitations to conduct a more thorough review of the merits. The applicant’s request should therefore be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

³ 10 U.S.C. § 1552(b).

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).

⁶ 33 C.F.R. § 52.24(b).

ORDER

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

April 11, 2023

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